THE INDIAN CONSTITUTION AND ITS ACTUAL WORKING

BY

DEBENDRA NATH BANERJEE, M. A.
Reader in Politics and Acting Head of thc Department of Economics and Politics, University of Dacca; formerly Professor of Economics, Dacca College.

SECOND EDITION

REVISED AND ENLARGED

LONGMANS, GREEN & CO., LTD.
6 OLD COURT HOUSE STREET, CALCUTTA
53 NICOL ROAD, BOMBAY
MOUNT ROAD, MADRAS
LONDON, NEW YORK AND TORONTO
1930

PRINTED IN INDIA
BY GEORGE KENNETH
AT THE DIOCESAN PRESS, VEPERY, MADRAS
1930—C7843.

I

FOREWORD TO THE FIRST EDITION

I 'HE Government of India Act of 1919 is admittedly not perfect Act. I have yet to learn of a legislative ıctment which can be described as such. But it ›re3ents an honest and considered attempt to provide 3ia with a workable Constitution on Western lines. ' therefore to be regretted that a considerable volume D :icism has been directed against the measure by *Reade* vho (to judge by their utterances) have devoted *of* :tention to its contents ; while, as far as Bengal is *h* ed, it must be acknowledged that no serious ıas been made to explore and develop the oppor- which are afforded by the Act.

ɜlcome, therefore, the valuable and suggestive ıtion which Mr. Debendra Nath Banerjee offers following pages towards a careful and sustained ɔf the present constitutional position. But, with to the resubmission of rejected grants, I venture ıgree with him. The total rejection of a grant ıot supply the most adequate method of expressing isfaction with the policy of a Minister or Ministers. end is more properly achieved by the carrying of ɜn reduction—which by Parliamentary convention is at £100—in the amount of a grant : and I note the point has not been overlooked in dealing with question of Ministers' salaries. The same principle be held to apply to grants for the administration ıose departments which have been placed under sterial control. In such cases total rejection is likely esult in dislocation of that portion of the administra- machinery for which the money is required. No

constitution can be worked if it is to remain liable to a succession of shocks which must deprive transferred subjects of the funds necessary for their administration. The wholesale rejection of grants forms no part of the English political system, and this is no doubt the reason why Mr. Banerjee has been unable to find English precedents : but he may rest assured that, if the practice became common, steps would promptly be taken to prevent its recurrence.

No discussion is, however, possible without a healthy difference of opinion ; and I can recommend Mr. Banerjee's book with confidence to the rising generation of Bengal, with whom the rightful guidance of the future of their country rests.

EVAN COTTON.

EXTRACTS FROM THE PREFACE TO THE FIRST EDITION

THE object of this book is to describe the present Constitution of India, with special reference to its working since its inauguration. * * * I have attempted, as far as possible, to treat the subject in an impartial and scientific way. I have not, however, hesitated to express my own views on undecided points of law, in the hope of eliciting expressions of opinion from others who are more competent to judge of them than myself. Nor have I refrained from pointing out what appeared to me to be inherents defects in our constitutional system, by comparing it with the political systems of England and of self-governing Dominions like Canada, Australia and South Africa. Another point which I should like my readers to keep in view, is that this book treats of the existing Constitution of India and not of its Administration. The foregoing statement will, I hope, suffice to explain the general scope and plan of the work.

* * * *

I take this opportunity of expressing my thanks to Dr. P. J. Hartog, C.I.E., Vice-Chancellor of Dacca University, for the assistance I have received from him both in the preparation and publication of this book. I have, while engaged on it, always enjoyed his genuine sympathy and encouragement. I am also deeply indebted to Professor P. B. Rudra of Dacca Intermediate College, who has read through practically the whole of the book in manuscript, and favoured me with a number of corrections. I

must also thank Dr. R. C. Majumdar, Mr. C. L. Wrenn and Mr. P. K. Guha of the University of Dacca for the help I have received from them in connection with this work.

I have tried to bring the book, as far as possible, up to date. As it has been prepared under the constant pressure of official duties, I may perhaps have fallen into errors on some points. I shall be extremely grateful if any of my readers will kindly call my attention to any errors which they may discover.

* * * *

It is at once a duty and a pleasure to express here my sense of obligation to Sir Evan Cotton, C.I.E., late President of the Bengal Legislative Council, who has kindly written a Foreword to the book, and to Mr. H. D. Bhattacharyya of Dacca University, who has gone through all the proofs with great care and made valuable suggestions upon them.

D. N. BANERJEE.

DACCA UNIVERSITY,
February, 1925.

PREFACE TO THE SECOND EDITION

In this edition, which has been unavoidably much delayed, the book has been thoroughly revised and an attempt has been made to bring it, as far as possible, up to date. This has entailed numerous alterations and additions. Chapter XI has been entirely rewritten and the peculiarities of the Indian electoral system have been more fully dealt with therein. A few more appendices have also been added.

I am indebted to Professor A. Berriedale Keith of the University of Edinburgh for having very kindly called my attention to two slight errors which had crept into the first edition through an oversight. They have been corrected in this edition.

The book is chiefly based upon original official documents. I have, however, occasionally made illustrative quotations from the works of various authors and I express here my deep sense of obligation to all of them. I have always acknowledged the source on which I have drawn.

I cannot thank too highly Mr. H. D. Bhattacharyya, Head of the Department of Philosophy in the University of Dacca, who has very carefully read the proofs of this edition also, and given me a number of useful suggestions. I should be failing in my duty if I did not acknowledge in this connexion the help which I have received in the preparation of this edition too, from Professor P. B. Rudra of Dacca Intermediate College, who has kindly assisted me in the correction of the proofs and whose literary criticisms have been of great value to me.

DACCA UNIVERSITY, D. N. BANERJEE.
January, 1930.

EXPLANATIONS OF ABBREVIATIONS USED IN THE BOOK

Joint Report = Report on Indian Constitutional Reforms.
Montagu-Chelmsford Report = Do.
Crewe Committee = The Committee on the Home Administration of Indian Affairs.

L. A.	= The Legislative Assembly.
C. S.	= The Council of State.
B. L. C.	= The Bengal Legislative Council.
P. L. C.	= Provincial Legislative Council.
E. R.	= Electoral Rule.
Sch.	= Schedule.
The Act	= The Government of India Act (unless it appears otherwise from the context).
J. S. C. R.	= Report of the Joint Select Committee or the Government of India Bill, 1919.
Ind. Gaz.	= *The Gazette of India.*
Imp. Gaz.	= *The Imperial Gazetteer.*
Cal. Gaz.	= *The Calcutta Gazette.*
S. O.	= Standing Order.
U. P.	= The United Provinces.
C. P.	= The Central Provinces.
Ind.	= India.
Ben.	= Bengal.
Mad.	= Madras.
Bom.	= Bombay.
L. A. D.	= *The Legislative Assembly Debates.*
C. S. D.	= *The Council of State Debates.*
I. L. R.	= Indian Legislative Rule.
P. L. R.	= Provincial Legislative Rule.
Govt.	= Government.

N.B.—All references to daily newspapers are to their *dâk* editions.

CONTENTS

CHAPTER I

INTRODUCTORY

THE SALIENT FEATURES OF THE INDIAN CONSTITUTION

CHAPTER II

LEGISLATURES—THE INDIAN LEGISLATURE

THE LEGISLATIVE ASSEMBLY

CHAPTER III

LEGISLATURES—THE COUNCIL OF STATE

PAGES

CHAPTER IV

LEGISLATURES—THE PROVINCIAL LEGISLATIVE COUNC

CHAPTER V

QUALIFICATIONS OF ELECTED AND NOMINATED MEMBERS

CHAPTER VI

THE ELECTORAL ROLL

CHAPTER VII

ELECTORS FOR THE COUNCIL OF STATE

CHAPTER VIII

ELECTORS FOR THE LEGISLATIVE ASSEMBLY

CHAPTER IX

QUALIFICATIONS OF ELECTORS FOR THE BENGAL AND THE UNITED PROVINCES LEGISLATIVE COUNCIL

CHAPTER X

QUALIFICATIONS OF ELECTORS FOR THE MADRAS AND BOMBAY LEGISLATIVE COUNCILS

CHAPTER XI

THE NATURE OF THE ELECTORAL SYSTEM

CHAPTER XII

ELECTORAL PROCEDURE AND MEMBERSHIP

CHAPTER XIII

THE INDIAN LEGISLATURE—ITS PRIVILEGES AND POWERS

CHAPTER XIV

POWERS OF THE PROVINCIAL LEGISLATIVE COUNCILS

CHAPTER XV

PROCEDURE IN THE INDIAN LEGISLATURE

CHAPTER XVI

PROCEDURE IN THE INDIAN LEGISLATURE—(*continued*)

CHAPTER XVII

PROCEDURE IN A GOVERNOR'S LEGISLATIVE COUNCIL

CHAPTER XVIII

THE 'HOME' GOVERNMENT

CHAPTER XIX

THE 'HOME' GOVERNMENT—POWERS OF THE SECRETARY OF STATE

PAGES

CHAPTER XXI

PROVINCIAL GOVERNMENTS

PAGES

CHAPTER XXII

THE PUBLIC SERVICES IN INDIA

CHAPTER XXIII

FINANCE

CHAPTER XXIV

THE JUDICIARY AND THE ECCLESIASTICAL ESTABLISHMENT

CHAPTER XXV

THE REFORMS SCHEME IN OPERATION

APPENDICES

CHAPTER I

INTRODUCTORY

THE SALIENT FEATURES OF THE INDIAN CONSTITUTION

The Indian Constitution mainly 'written' and documentary—Its basis—Conventional elements in it—Comparison with the Constitutions of England and the United States—Its generally 'rigid' character—Indian legislatures 'non-sovereign law-making bodies'—Power of the Indian Courts—Comparison with the Union of South Africa—The Constitution as yet unitary and not federal—Comparison with the United States and Canada—How it came to be unitary—A forecast about the future form of the Government of India—The provisional character of the present Constitution of India.

The Indian Constitution mainly 'written' and documentary. Its basis.

The Constitution of British India, [1] whereby we mean the body of rules and principles relating to its fundamental political institutions, is mainly 'written' and documentary. Its basis is an enactment of the British Parliament, namely, the Government of India Act,[2] and the Rules [3] made thereunder. There are no doubt some

[1] 'The expression British India shall mean all territories and places within Her Majesty's dominions which are for the time being governed by Her Majesty through the Governor-General of India, or through any Governor or other officer subordinate to the Governor-General of India. The expression India shall mean British India, together with any territories of any Native Prince or Chief under the suzerainty of Her Majesty, exercised through the Governor-General of India or through any Governor or other officer subordinate to the Governor-General of India'.—The Interpretation Act of 1889 (52 and 53 Vict., Ch. 63, Sec. 18).—*The Imperial Gazetteer of India*, vol. iv, pp. 59-60

[2] 5 and 6 Geo. 5, Ch. 61; 6 and 7 Geo 5, Ch 37; 9 and 10 Geo. 5, Ch. 101; and 14 and 15 Geo. 5, Ch. 28 It is the Government of India Act, 1915, as amended by the Government of India (Amendment) Act, 1916, and as further amended by the Government of India Act, 1919, the Government of India (Leave of Absence) Act, 1924, the Government of India (Civil Services) Act, 1925, the Government of India (Indian Navy) Act, 1927, and the Government of India (Statutory Commission) Act, 1927.

[3] e.g., the Devolution Rules; the Electoral Rules; the Legislative Rules, etc.

conventional elements[1] in our Constitution, but their number is, as yet, not very considerable; nor are they, with very few exceptions, of much constitutional importance. Whatever differences of opinion may exist among constitutional writers regarding the exact proportion and political significance of the conventional elements in the Constitution of

Conventional elements in it.

Under Section 129A of the Government of India Act, where any matter is required to be prescribed or regulated by Rules under the Act and no special provision is made as to the authority by whom the Rules are to be made, the Rules are made by the Governor-General in Council with the sanction of the Secretary of State in Council, and are not subject to repeal or alteration by the Indian Legislature or by any local legislature All such Rules must ordinarily be laid before both Houses of Parliament as soon as may be after they are made, and if an address is presented to His Majesty by either House of Parliament within the next thirty days on which that House has sat after the Rules are laid before it, prayin that the Rules or any of them may be annulled, His Majesty i Council may annul the Rules or any of them, and those Rules mus thenceforth be void, but without prejudice to the validity o anything previously done thereunder.

If, however, the draft of any such Rules are laid, under the direction of the Secretary of State, before both Houses of Parliament and are approved by them without modification or with such modifications as are agreed to by both Houses, the Rules may be made in the form in which they have been approved. These rules will be valid without further reference to Parliament.

[1] e.g., the custom, seldom disregarded, fixing the tenure of office of certain high officials like the Governor-General, the Governor, the Lieutenant-Governor and the member of an Executive Council, a five years. This 'limitation is not imposed by statute or by the instrument of appointment' (Ilbert, *The Government of India*, p. 45) The origin of this custom may be traced to the particular provision of Lord North's Regulating Act which fixed the tenure of office o the first Governor-General and his 'Counsellors' at five years (Cf Ilbert).

Among other constitutional maxims which have been accepted a part of our Constitution, we may mention here the following :—

(1) 'The Ministers selected by the Governor to advise him on the transferred subjects should be elected members of the Legislative Council, enjoying its confidence and capable of leading it';

(2) they must resign office when they have ceased to command the confidence of the Council ; and

(3) the Finance Act (in the case of the Central Government

the United States of America, it will not at all be far from the truth to assert that, so far as the preponderance of the 'written' and legal elements is concerned, our Constitution resembles more closely the Constitution of the United States than that of England, which is, to quote the words of Sir Sidney Low,[1] 'partly law, and partly history, and partly ethics, and partly custom, and partly the result of the various influences which are moulding and transforming the whole structure of society, from year to year and one might almost say, from hour to hour'.

Comparison with the Constitutions of England and the United States.

The second noticeable feature of our Constitution is its *generally* 'rigid' character. 'A "rigid" Constitution',[2] says Sir John Marriott,[3] 'is one which can be altered and amended only by the employment of some special, and extraordinary, and prescribed machinery, distinct from the machinery of ordinary legislation'.

Its generally 'rigid' character.

[1] *The Governance of England*, 1919, p. 4.

The English Constitution, says Viscount Bryce, 'is a mass of precedents, carried in men's memories or recorded in writing, of dicta of lawyers or statesmen, of customs, usages, understandings and beliefs bearing upon the methods of Government, together with a certain number of statutes, some of them containing matters of petty detail, others relating to private just as much as to public law, nearly all of them pre-supposing and mixed up with precedents and customs, and all of them covered with a parasitic growth of legal decisions and political habits, apart from which the statutes would be almost unworkable, or at any rate quite different in their working from what they really are'.—*Studies in History and Jurisprudence*, vol. i, 1901, pp. 156-57.

[2] Constitutions are classified as 'Rigid' and 'Flexible'.

'A "flexible" Constitution is one under which every law of every description can legally be changed with the same ease and in the same manner by one and the same body. . . . A "rigid" Constitution is one under which certain laws generally known as constitutional or fundamental laws cannot be changed in the same manner as ordinary laws.' Dicey, *The Law of the Constitution*, pp. 122–23 (eighth edition).

[3] J. A. R. Marriott, *English Political Institutions*, p. 17.

The 'rigidity' of the Indian [1] Constitution consists in the fact that it cannot be legally changed, except in respect of a few matters,[2] either by the Indian Legislature or by any of the Provincial legislatures. The Government of India Act which (together with the Rules made thereunder) is, as has been stated above, the basis of our Constitution, cannot be repealed except by an Act of the Imperial Parliament; nor can it be otherwise amended save in respect of some of its provisions with regard to which it has conferred upon the Indian Legislature a concurrent power of legislation.[3] 'The Indian Legislature[4] has not, unless expressly so authorised by Act of Parliament, power to make any law repealing or affecting any Act of Parliament passed after the year one thousand eight hundred and sixty and extending to British India (including the Army Act, the Air Force Act and any Act amending the same); . . . and has not power to make any law affecting the authority of Parliament, or any part of the unwritten laws or constitution of the United Kingdom of Great Britian and Ireland whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom, or affecting the sovereignty or dominion of the Crown over any part of

[1] Purists will, it is hoped, forgive the use of the shorter expressions 'India' and 'Indian' for 'British India' and 'British Indian.'

[2] See foot-note 3 below.

[3] Under Section 131 (3) of the Government of India Act, the Indian Legislature can alter or repeal some of the provisions of the Act, mentioned in the fifth Schedule to the Act. To this extent, it must be admitted, the 'rigid' character of our Constitution has been affected. Hence we have used the word 'generally' before the expression 'rigid character' (page 3). But it may be noted here that some of the provisions mentioned in the Schedule refer to matters which cannot be regarded as of any constitutional importance. They have been embodied in the Government of India Act, simply because it is a consolidating measure. See Appendix L.

[4] 'Subject to the provisions of the Government of India Act, the Indian Legislature shall consist of the Governor-General and two Chambers, namely, the Council of State and the Legislative Assembly'.—The Government of India Act, Section 63.

British India.'[1] Again, 'the local legislature of any province has not power to make any law affecting any Act of Parliament.'[2]

Indian legislatures, 'non-sovereign' law-making bodies.

The Indian legislatures are, to use Prof. Dicey's words, 'non-sovereign law-making bodies'; their powers and authority have been derived from the Government of India Act which constitutes the supreme law of the land, and their laws are valid if they are not inconsistent with this supreme law. As Section 84(1) of the same Act distinctly lays down, 'a law made by any authority in British India and repugnant to any provision of this or any other Act of Parliament shall, to the extent of that repugnancy but not otherwise, be void.'[3] The Courts in India may be called upon to pronounce upon the legality or constitutionality of an Act passed by an Indian legislature, Central or Provincial. If any particular piece of Indian legislation is not within the legal powers of the enacting authority, it is bound to be treated as void by an Indian judge. As Prof. Dicey says, 'The Courts (in India) treat Acts passed by the Indian Council[4] precisely in the same way in which the King's Bench Division treats the bye-laws of a railway company. . . . An Indian tribunal may be called upon to say that an Act passed by the Governor-General need not be obeyed because it is unconstitutional or void.' 'No British Court', he continues, 'can give judgment, or ever does give judgment, that an Act of Parliament need not be obeyed because it is unconstitutional. Here, in short, we have the essential

Power of the Indian Courts.

[1] The Government of India Act, Section 65.
[2] *Ibid.*, Section 80A (4).
[3] See in this connexion Bugga *vs.* The King-Emperor, 47 I.A., pp. 139–140.
[4] He obviously means here the Indian Legislative Council. He had written his book (from which the extract has been quoted) long before the Government of India Act, 1919 (or, even, 1915), was passed.

difference between subordinate and sovereign legislative power.' [1]

We may note here that in respect of constitutional amendment the position of the Parliament of the Union of South Africa is fundamentally different from that of the Indian Legislature. There the Parliament can change the Constitution of the Union in the same way as it can amend one of its ordinary laws. 'The only limitation', says the Hon'ble Mr. R. H. Brand,[2] 'on the complete power of Parliament over the Constitution is the requirement of a two-thirds majority (at a joint sitting of both Houses of Parliament) in certain particular cases.'[3]

Comparison with the Union of South Africa.

The third feature that we notice in our Constitution is that it is as yet unitary, and not federal. 'Federalism means,' writes Prof. Dicey, 'the distribution of the force of the State

[1] Dicey, *The Law of the Constitution*, eighth edition, pp. 96 and 98.

The following extract from the judgment of the Judicial Committee of the Privy Council (delivered by Lord Selborne) in what is known as the Empress *vs*. Burah (and another) case is of special interest in this connexion :—

'The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can, of course, do nothing beyond the limits which circumscribe these powers. But when acting within these limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have, plenary powers of legislation, as large, and of the same nature, as those of Parliament itself. The established Courts of Justice, when a question arises whether the prescribed limits have been exceeded, must of necessity determine that question ; and the only way in which they can properly do so, is by looking to the terms of the instrument by which, affirmatively, the legislative powers were created, and by which, negatively, they are restricted. If what has been done is legislation within the general scope of the affirmative words which give the power, and if it violates no express condition or restriction by which that power is limited (in which category would, of course, be included any Act of the Imperial Parliament at variance with it), it is not for any Court of Justice to inquire further, or to enlarge constructively those conditions and restrictions'.—*The Indian Law Reports*, 1879, Calcutta Series, vol. iv, pp. 180-181.

[2] The Hon. R. H. Brand, *The Union of South Africa*, p. 45.

[3] South Africa Act, 1909 (9 Edw. 7, Ch. 9), Section 152.

among a number of co-ordinate bodies each originating in and controlled by the constitution.'[1] This definition is not yet applicable to the constitutional system that we have now in our country. Congress in the United States has *exclusive* power of legislation with regard to certain definite matters[2] and it cannot legally exercise any legislative jurisdiction over those subjects which have been reserved to the separate States by the Constitution of the country.[3]

The Constitution as yet unitary and not federal.

Comparison with the United States and Canada.

Nor can the Federal Executive veto any State legislation. Thus the State and the Federal legislatures are co-ordinate authorities in the United States. The same principle of exclusive legislative jurisdiction of the Central and Provincial legislatures has been accepted as the basis of the constitutional system of the Dominion of Canada, although, in respect of the distribution of powers between the Central and Provincial authorities, there is a fundamental difference between the Constitution of the Dominion and that of the United States and, although the Central Government in the Dominion can disallow any Provincial Act, which, as we have stated above, is not the case in the United States. It is distinctly laid down in Section 91 of the British North America Act, 1867, that 'it shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order and good government of Canada in relation to all matters not coming within the classes of subjects by this Act *assigned exclusively* to the Legislatures of the Provinces; and for greater certainty, but not so as to restrict the generality of

[1] Dicey, *Law of the Constitution*, p. 153 (eighth edition).

[2] Cf. The Constitution of the United States.

[3] The tenth amendment to the Constitution of the United States provides: 'The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.'

the foregoing terms of this Section, it is hereby declared that (notwithstanding anything in the Act) the *exclusive legislative authority* of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated. . . .'[1]

Now let us turn our attention to our own country. As regards the control of the Central Government over Provincial legislation, we find that if the Governor, Lieutenant-Governor, or Chief Commissioner, as the case may be, assents to a Bill which has been duly passed by a Provincial Legislative Council, 'he shall forthwith send an authentic copy of the Act to the Governor-General, and the Act shall not have validity until the Governor-General has assented thereto and that assent has been signified by the Governor-General to, and published by, the Governor, Lieutentant-Governor or Chief Commissioner.'[2] It may be noted here that though the Dominion Government in Canada can disallow a Provincial legislation, the assent of the Governor-General there is not required (except in the case of 'reserved' Bills) for the validity of a Provincial Act.[3]

[1] Cf. Section 92 of the British North America Act, 1867.

'The Dominion parliament and the provincial legislatures are sovereign (?) bodies within their respective constitutional limits. While the Dominion parliament has entrusted to it a jurisdiction over matters of national import, and possesses besides a general power to legislate on matters not specifically reserved to the local legislatures, the latter nevertheless have had conferred upon them powers as plenary and ample within the limits prescribed by the constitutional law as are possessed by the general parliament.— Sir J. G. Bourinot, *Constitutional History of Canada*, p. 136.

[2] The Government of India Act, Section 81.

[3] British North America Act, 1867, Section 90.

Whatever departures from the principle of federalism are noticed in the Constitution of Canada, are due to the fact that the Constitution is not *strictly* federal. It has a 'unitary bias'. As Mr. Egerton puts it, 'The British North America Act is further noteworthy as being a federal Constitution to a great extent drafted by men who were in favour of a legislative union'.—*Federations and Unions within the British Empire*, p. 39. See in this connexion Sir John Marriott's *Second Chambers*, pp. 150–151.

As regards the scope of legislative authority, though 'the local legislature of any province has power, subject to the provisions of the Government of India Act, to make laws for the peace and good government of the territories for the time being constituting that province,'[1] yet it is especially laid down in Section 65 of the Act[2] that 'the Indian Legislature has power to make laws for all persons, for all courts, and for all places and things, within British India. . . .' Besides, the local legislature of any province may not, without the previous sanction of the Governor-General, make or take into consideration certain laws enumerated in Section 80A (3) of the Act.

'Unitarianism' implies the concentration of the powers of Government in a central authority and this concentration exists in our system of government to a pre-eminent degree, as shown above.[3] This justifies our characterizing our present Constitution as unitary.[4]

How it came to be unitary.

Perhaps it will not be out of place to mention here that the present unitary character of our political system is the inevitable result of the operation of certain forces from so far back as 1773. Before the passing of the East India Company Act of 1773 (commonly known as the Regulating Act), the Presidencies of Bengal, Bombay and Madras, which were, in each case, administered by a President or Governor and a Council composed of servants of the East India Company, 'were independent of each other, and each Government

[1] The Government of India Act, Section 80A.

[2] i.e. The Government of India Act.

[3] That Clause 2 of Section 67 of the Government of India Act forbids the introduction into either chamber of the Indian Legislature of any measure regulating any Provincial subject (which is not subject to legislation by the Indian Legislature), or repealing or amending any Provincial Act, without the previous sanction of the Governor-General, does not in any way invalidate our proposition that the Indian Constitution is unitary.

[4] As a further proof of this, we may cite here Section 84 (2) of the Government of India Act. See Chap. 14.

was absolute within its limits, subject to the distant and intermittent control of the Directors at Home. But 'the need for a common policy in the face of foreign enemies was apparent ; and when the disorder of the Company's finances and suspicions about the fortunes amassed by its servants in India drove Parliament to intervene, it was wisely decided to create one supreme Government in the country.'[1] In order to ensure this the Act of 1773 provided for the appointment of a Governor-General and four counsellors for the government of the Presidency of Fort William in Bengal and further declared that the said Governor-General and Council, or the major part of them, were 'to have power of superintending and controlling the government and management of the Presidencies of Madras, Bombay and Bencoolen respectively, so far and in so much as that it should not be lawful' for the Governments of the three Presidencies to make any orders for commencing hostilities, or declaring or making war, against any Indian Princes or Powers, or for negotiating or concluding any treaty of peace, or other treaty with any such Indian Princes or Powers, without the consent and approbation of the Governor-General and Council, except in such cases of imminent necessity as would render it dangerous to postpone such hostilities or treaties until the arrival of their orders, and except also in such cases where they had received special orders from the Company.[2] A President and Council acting against these provisions were liable to be suspended by the Governor-General and Council ; and they were directed to pay due obedience to orders emanating from the latter authorities.[3] Thus the first step towards centralization was taken in 1773.

[1] *Report on Indian Constitutional Reforms*, para. 37.
[2] The East India Company Act, 1773 (13, Geo. 3, Ch. 63), Section 9. P. Mukherji's *Constitutional Documents*, vol. i, p. 22.
[3] *Ibid.*

The next step towards establishing a centralized system of government in India was taken in 1784. The East India Company Act of that year (commonly known as Pitt's Act) authorized the Governor-General and Council of Fort William to 'superintend, control and direct the several Presidencies and Governments (then existing or thereafter to be erected or established in the East Indies by the United Company) in all such points as relate to any transactions with the Country Powers, or to war or peace, or to the application of the revenues or forces of such Presidencies and Settlements in time of war, or any such other points as would be, from time to time, specially referred by the Court of Directors of the Company to their superintendence and control.'[1] The Charter Act of 1793 further emphasized this 'power of superintendence, direction and control' to be exercised by the Government of Bengal over the Governments of Madras and Bombay. The final stage in this process of centralization was reached with the passing of the Charter Act of 1833.[2]

Under this Act the Governor-General of Bengal in Council became the Governor-General of India in Council. 'The Governments of Madras and Bombay were drastically deprived of their powers of legislation, and left only with the right of proposing to the Governor-General in Council projects of the laws which they thought expedient.'[3] Thus

[1] The East India Company Act, 1784, Section 31. P. Mukherji's *Constitutional Documents*, vol. i, p. 39.

[2] 3 and 4 Will. IV, Ch. 85.

[3] *Report on Indian Constitutional Reforms*, para 57. See the Charter Act of 1833, Sections 59 and 66.—P. Mukherji's *Constitutional Documents*, vol. i.

The powers of legislation were however restored to the Governments of Madras and Bombay by the Indian Councils Act of 1861. But there were two limitations: (i) those Governments could not make or take into consideration certain laws without the previous sanction of the Governor-General; and (ii) Acts passed by them could not be valid unless they had received the assent of the Governor-General

the Governor-General of India in Council[1] became the sole law-making authority in India. Besides, 'the superintendence, direction and control of the whole civil and military government of the Company's territories and revenues in India' were vested in him. And it was further enacted that no Governor or Governor in Council should have the power of creating any new office, or granting any salary, gratuity or allowance, without the previous sanction of the Governor-General in Council. Thus was effected a complete concentration of all powers in one supreme authority.

Later on, measures were adopted to increase the legislative, financial and administrative powers of the Provincial Governments; but the Government of the country just before the introduction of the Montagu-Chelmsford Reforms 'was one and . . . the local Governments were literally the "agents" of the Government of India.'[2] A great step towards Provincial independence has no doubt been taken under the Reforms, but nothing has yet been done, in law and theory, to destroy the unitary character of our constitutional system.

A forecast about the future form of the Government of India.

What form the Government of our country will take in the future, it is extremely difficult to predict now. The problems of the territories now under the rule of the Indian Princes complicate the whole situation. At the same time, one can hardly think of India enjoying full dominion

in addition to that of the Governor.—The Indian Councils Act, 1861.

These limitations did not exist before 1833.—*Montagu-Chelmsford Report*, para 63.

[1] His Council was increased by the addition of a law member not in the service of the Company. This additional member was not entitled 'to sit or vote in the said council except at meetings thereof for making laws and regulations.' The Charter Act, 1833, Section 40. Mukherji's *Documents*.

[2] *Report on Indian Constitutional Reforms*, para. 120.

status with more than one-third of its[1] area lying outside the jurisdiction of its Government. If these Indian States are to be given a worthy place in any scheme of reconstruction of our governmental system, and if their interests and privileges are to be harmonized with those of the provinces of British India, some form of federation is the only solution.[2] The provinces of British India may not have any innate powers of their own to surrender in a 'fœdus',[3] but the same cannot be said of the important Indian States. Apart from this, there are other considerations to be taken into account. 'Federalism is' according to a very distinguished authority[4] on Constitutional Law, 'an equally legitimate resource whether it is adopted for the sake of tightening or for the sake of loosening a pre-existing bond.' In our proposed federation, the pre-existing bonds of union between the Indian States and British India will have to be tightened, and those between the central and local Governments of British India will have to be loosened.

[1] The total area of India is 1,805,332 square miles. Of the total area British territory comprises 1,094,300 square miles and the Indian States 711,032 square miles.—*Statistical Abstract for British India, 1916-17 to 1925-26.*

[2] 'Granted the announcement of August 20, we cannot at the present time envisage its complete fulfilment in any form other than that of a congeries of self-governing Indian provinces associated for certain purposes under a responsible government of India; with possibly what are now the Native States of India finally embodied in the same whole, in some relation which we will not now attempt to define. For such an organization the English language has no word, but "federal."' —*Report on Indian Constitutional Reforms*, para. 120.

'A Federation of States—comprising under the name of "State" each Indian State and each Province of British India—with local autonomy, given much flexibility and allowing room for wide differences in internal government, seems the most likely form to be evolved in the future'.—*Britain and India from 1599-1919*, by Dr. Annie Besant; *Work of the Indian Legislatures*, p. 236.

Vide also Government of India's (Home Department) Despatch, dated Simla, August 25, 1911, para. 3.

[3] *Report on Indian Constitutional Reforms*, para 120.

[4] Bryce, *The American Commonwealth* (1922), vol. i, p. 351.

But it must also be stated in this connexion that it will be a folly to ignore altogether the peculiar position of the Indian States with their traditions of independence in respect of matters of internal administration, as it will be unwise to ignore any longer the insistent demand for 'provincial autonomy' on the part of the provinces of British India. On the one hand, the States represent in a special manner the centrifugal forces in Indian politics. Such forces 'may, if too closely pent up, like heated water in the heart of the earth, produce at untoward moments explosions like those of a volcano.'[1] They may, at least, cause a 'harmful friction' and impede the smooth working of the constitutional machinery.[2] They may also introduce 'an element of instability' into the body politic, and may even become sources of danger in times of internal disturbance or external invasion.[3] On the other hand, it may be urged on behalf of the granting of provincial autonomy that 'the energy of civic life may be better secured by giving ample range and sphere of play to local self-government, which will stimulate and train the political interest of the members of the State, and relieve the central authority of some onerous duties.'[4] At the same time, the unity of the political system of the country as a whole, and also the stability and efficiency of its Central Government have to be maintained. Thus India will have to solve the same problem of the proper adjustment of the centrifugal and centripetal forces in its politics, that has been solved by other countries having a federal system of government. The constitutional history of the United States of America may provide us with valuable guidance in solving many of the problems presented by the Indian States, as well as in determining their status in the

[1] See Bryce, *Studies in History and Jurisprudence* (1901), vol. i, p. 294.
[2] *Ibid.*, p. 270. [3] *Ibid.*, p. 270.
[4] *Ibid.*, p. 294.

future Constitution of India; while that of Upper and Lower Canada[1] from 1841 to 1867 may prove an equally helpful guide in settling the future relations of the provinces of British India to the Central Government. As Prof. Wrong said in the course of his lecture[2] on 'The Creation of the Federal System in Canada,' 'In Canada, the problem was for the Union[3] to get rid of some of its powers in favour of the provinces, while, in the United States, there was the opposite problem of getting the separate units to give up something, in order to create a central government. In Canada the central power retained all that it did not give up, while, in the United States, it was the separate units which did this. Thus we have the far-reaching difference in the basis of the two federations. Canada is a single State, in which the various units have prescribed powers; the United States is a union of many States, which have agreed to delegate certain powers to a central authority.' Thus, there are lessons to be learnt from both these countries.

The distribution of powers in our proposed federation will be as in a federal constitution. The Central Government with its organs reconstructed on a basis different from the present, will be in charge of those affairs of State which will be of common interest to all or which will require uniformity of action; while the provincial and 'State' Governments will enjoy complete autonomy in respect of the affairs of local interest. It may be desirable to vest in the federal executive, as in the case of Canada, the power of

[1] See Kennedy, *The Constitution of Canada* (1922), Chs. 13 and 17-19; see also *The Federation of Canada* (1917), Oxford University Press.

[2] Delivered in the University of Toronto in March, 1917. See *The Federation of Canada* (Oxford University Press), p. 24.

[3] It means the legislative union of Upper and Lower Canada under the Imperial Union Act of 1840 (3 and 4 Victoria, c. 35). This Union was replaced by their federation along with two other provinces under the British North America Act, 1867.

disallowing provincial (or State) legislation, although it must be understood from the very beginning that this power of disallowance must be exercised with great care and caution. Such a constitutional provision will act as a potential check on disruptive legislative activities on the part of local legislatures. Besides, it will be quite in keeping with the traditions of the centralized system of Government that has hitherto obtained in British India, as also with the implications of the suzerainty which the British Crown has so far claimed and exercised over the Indian States. Thus our idea is that though our future Constitution should be federal in form, it should have a 'unitary bias'.

Addressing the members of the Indian Legislature on August 20, 1925, Lord Reading, as Governor-General, made the following observation[1] in the course of his speech:—

'There are many in India at the present moment who hold the solution lies in Provincial autonomy. The principle that local affairs should be administered by Local Governments is one that commands general acceptance. But if we are to avoid disintegration—a danger that the history of India constantly emphasizes—there must, in my judgment, be a strong Central Government capable of exercising a legitimate degree of supervision and control. The relations of such a Government to a number of so-called autonomous Provincial Governments have not yet been thought out. It can scarcely be contemplated even by the most ardent friends of Provincial autonomy that there should be nine or more, and as some contend many more, separate and independent Provincial Governments entirely free in all directions from supervision and control. Before any scheme of Provincial autonomy could be established, the functions that should be entrusted to them and the degree of super-

[1] Legislative Assembly Debates, vol. vi, 1925, p. 14.

vision and control to be exercised over them must be explored with patience.'

The solution that we have suggested above should satisfy him as well as those who think like him about the feasibility of Provincial autonomy, or entertain honest doubts as to the possibility of success of federalism, in India, because it will meet all legitimate requirements of both union and separation.

The provisional character of the present Constitution of India.

This general survey of the political system of British India will remain incomplete if we do not notice here two other peculiarities of our present Constitution—its essentially provisional character and its elasticity. The scheme of government which was embodied in the Government of India Act, 1919, was devised by its authors to meet the requirements of the period of transition from bureaucracy to responsible government—the goal of British policy in India. For a long time the people of India had been insisting on having an effective voice in the administration of their own country and in the shaping of its destinies. The Great War and India's participation in it, the revolution in Russia and the overthrow of autocracy there, the speeches of English and American statesmen proclaiming the right of all nations to self-determination,—all these gave a new impetus to those political aspirations of the Indian people. It, therefore, became very necessary to grant them substantial political rights without further delay. But there were others again who had to be reckoned with: the representatives of vested interests as well as those who honestly believed in the danger of haste in liberalizing the Indian political institutions. The Government of India Act of 1919 was an attempt to please both these classes of people holding more or less conflicting views. Naturally it was a sort of compromise between the principle of progress and the principle of caution; between the demands

of a newly awakened nationalism and the warnings, not always prompted, however, by disinterested motives, of those who preferred experience to theory and were therefore afraid of anything new and untried. The result was a half-way-house arrangement between autocracy and popular government. This will explain some of the anomalies in our present constitutional system—especially the curious structure of government, commonly termed dyarchy, prevailing in the major provinces. This will also explain the continuance of an irremovable and irresponsible Executive in the Central Government and the creation of a Central Legislature with two Chambers, each having an elected majority, which, impotent to influence the course of administration of the country effectively, express their resentment in violent and bitter criticisms and, sometimes, in a policy of obstruction.

In regard to the elastic nature of our Constitution, it may be enough here to state that, if necessary, many important alterations in the constitution may be effected simply by means of rules framed under the Government of India Act, without the necessity of any Parliamentary enactment. The Act has outlined [1] the main features of the constitutional changes introduced by it, but has left these changes to be worked out in detail in the form of Rules to be made under its authority.[2] As Sir Courtenay Ilbert says, the

[1] See Chapter XXI in this connexion.

[2] 'This plan has been adopted again and again, in legislation with reference to the Government of India. It is the only plan which secures elasticity and a Bill of reasonable dimensions, not overloaded with detail. The existing (1919) law as to voters' qualifications and elections in India is not embodied in any statute, and any attempt to regulate such matters by statute would involve very long and complicated provisions, which, once incorporated in the statute, could not in the ordinary course be amended except by the slow and difficult process of further legislation. It must, moreover, be recognized that this Bill provides for the introduction of new constitutional forms expressly devised to fit the conditions of a transitional stage. Elasticity is therefore essential, so as to admit of detailed arrangements being

Constitution 'owes its elasticity mainly to an extensive use of what has sometimes been called delegated legislation, legislation not directly by Parliament, but by rules and orders made under an authority given by Parliament.'[1]

With these few introductory remarks we pass on to make a detailed study of our constitutional system.

worked out in the light of experience on the basis of the general scheme outlined in the statute. The process of development would be seriously embarrassed if the whole system were made rigid at the start. It is also necessary to bear in mind that on some important matters different provisions will be required in different Provinces'.—*Memorandum by the Secretary of State for India on the Government of India Bill, 1919.*

[1] Ilbert and Meston, *The New Constitution of India*, p. 28.

CHAPTER II

LEGISLATURES—THE INDIAN LEGISLATURE:

THE LEGISLATIVE ASSEMBLY

The Indian Legislature—The Legislative Assembly: its duration—Comparison with the Lower House in Canada, in Australia and in South Africa in respect of duration—Composition of the Legislative Assembly—Comparison with the Lower Houses of some other countries—Constituencies entitled to representation in the Legislative Assembly—Representation of special interests and communities in the Assembly—Its nominated members: their terms of office—The Governor-General and the Assembly—The President and the Deputy President of the Assembly—Their terms of office and salaries—The Parliamentary Joint Select Committee on the President of the Assembly—The functions of the Deputy President—Nomination of a panel of not more than four Chairmen for the Assembly.

The Indian Legislature.

In this and the fifteen following chapters we propose to state the composition of the Indian legislatures, Central and Provincial, and to describe their functions. We first take up, in the order of importance, the Central Legislature of India, which is known as the Indian Legislature. Technically it consists of the Governor-General and two Chambers, namely, the Council of State and the Legislative Assembly.[1] Ordinarily, a Bill is deemed to have been passed by the Indian Legislature, if it has been agreed to by both the Chambers.[2]

[1] The Government of India Act, Section 63.
[2] *Ibid.*

The Legislative Assembly: its duration.

The normal duration of every Legislative Assembly is three years from its first meeting; but it can be sooner dissolved by the Governor-General who can also extend its life for a further period if he thinks it necessary in special circumstances.[1]

Comparison with the Lower House in Canada, in Australia and in South Africa in respect of duration.

We may note here, by way of comparison, the position of the Lower House in some of the self-governing colonies of the British Commonwealth. The House of Commons in Canada continues for five years from the day of the return of the Writs for choosing the House (subject o being earlier dissolved by the Governor-General), and no longer.[2] In the Commonwealth of Australia every House of Representatives lasts for three years only from its first meeting; and though the Governor-General there may dissolve it before the expiration of its normal term, he cannot prolong its life.[3] The normal duration of the House of Assembly in the Union of South Africa is five years, and no longer; but its term may be earlier terminated by the Governor-General there,[4] as in the case of the other two colonies. Thus we find that, unlike the Governor-General in India, the Governor-General in Canada, Australia and in South Africa has no right to prolong the normal life of the Lower House in those countries.

Within six months of the dissolution of the Legislative Assembly or within nine months thereof with the sanction of the Secretary of State, the Governor-General is bound to appoint a date for its next session.[5]

The next point to be noticed in connection with our

[1] The Government of India Act, Section 63D.
[2] The British North America Act, 1867, Section 50.
[3] The Commonwealth of Australia Act, 1900, Section 28.
[4] South Africa Act, 1909, Section 45.
[5] The Government of India Act, Section 63D.

Legislative Assembly is its composition. It consists at present of one hundred and forty-five members of whom one hundred and four are elected and the rest are nominated. Among the nominated members twenty-six must be officials and one[1] must be a person nominated as the result of an election held in Berar. The present number of members in the Assembly has been fixed by Rules[2] made under the Government of India Act, and is in excess of the statutory number which is one hundred and forty only.[3] The Act declares that the maximum number in the case of the Legislative Assembly may be varied provided that, at least, five-sevenths of its members are elected, and, at least, one-third of the other members are non-officials.[4]

Composition of the Legislative Assembly.

It may be pointed out here that while the Indian Legislative Assembly is partly elected and partly nominated, membership in the House of Commons in England or Canada, in the Chamber of Deputies in France, in the House of Representatives in the United States or Australia, or in the House of Assembly in the Union of South Africa, rests entirely upon election by the people.

The Lower Houses of some other countries.

The elected members of the Indian Legislative Assembly have been allotted to the different provinces as follows:—Madras, 16; Bombay, 16; Bengal, 17; the United Provinces, 16; the Punjab, 12; Bihar and Orissa, 12; the Central

[1] Though actually elected, technically a nominee. The member in question is first elected by the Legislative Assembly constituency in Berar, which comprises the Berar Division minus the Melghat *taluk* of the Amraoti District, and is thereafter nominated to the Legislative Assembly by the Governor-General.—*The Berar Electoral Rules.*

[2] *The Legislative Assembly Electoral Rules* (corrected up to September 1, 1926).

[3] The Government of India Act, Section 63B.

[4] *Ibid.*

Provinces, 5; Assam, 4; Burma, 4; Delhi, 1; Ajmer-Merwara, 1.[1]

Constituencies entitled to representation.

Constituencies entitled to representation in the Legislative Assembly are as shown in the following table[2]:—

Provinces	Non-Muhammadan	Muhammadan	European	Landholders	Indian commerce	Sikh	Non-European	General	Total
Madras ...	10	3	1	1	1	...	...	...	16
Bombay ...	7	4	2	1	2	...	...	..	16
Bengal ...	6	6	3	1	1	...	...	...	17
United Provinces.	8	6	1	1	...	...	...	...	16
Bihar and Orissa.	8	3	...	1	...	...	...	...	12
Central Provinces.	3	1	...	1	...	...	...	...	5
Assam ...	2	1	1	...	...	...	...	..	4
Burma ...	...	...	1	...	...	...	3	...	4
Delhi ...	...	...	...	...	...	...	...	1	1
Punjab ...	3	6	...	1	...	2	...	...	12
Ajmer-Merwara.	...	...	...	...	...	...	...	1	1
Total ...	47	30	9	7	4	2	3	2	104

Representation of special interests and communities.

From the above table it is clear that so far as the Legislative Assembly is concerned, communal representation has been given to the Muhammadans, Europeans and Sikhs, and that the interests of the land-owning class and of Indian commerce have been safeguarded by special representation.

[1] *The Legislative Assembly Electoral Rules.* [2] *Ibid.*

A nominated member is either an official or a non-official.

Nominated Members: their terms of office.

He is nominated to the Assembly by the Governor-General.[1] A nominated non-official member holds office for the duration of the Legislative Assembly to which he is nominated. An official member holds office for the duration of the Assembly to which he is nominated, or for such shorter period as the Governor-General determines at the time of his nomination.[2]

Members of the Governor-General's Executive Council are nominated as members either of the Assembly or of the Council of State.[3] They have, however, the right,[4] like the Ministers in France or in the Union of South Africa,[5] to be present and to speak in either Chamber, whether members of it or not. Thus they can vote only in that House of which they are members.

The Governor-General is not a member of the Legislative Assembly; but he has the right of addressing it,

[1] The Legislative Assembly Electoral Rule 27.

The following extract may be noted in connexion with the question of nomination :—

'In respect of the non-official members to be nominated by the Governor-General we advise that no hard-and-fast rule should be laid down. These seats should be regarded as a reserve in his hands for the purpose of adjusting inequalities and supplementing defects in representation. Nominations should not be made until the results of all the elections are known; and then they should be made after informal consultation with the heads of provinces. . . The officials will . . . include . . . also some representation from the provinces'.—*Report on Indian Constitutional Reforms*, para. 275.

In the third Legislative Assembly, there are thirteen official members from the provinces distributed among them as follows: Madras, 2; Bombay, 2; Bengal, 2; the United Provinces, 1; the Punjab, 1; Bihar and Orissa, 1; Central Provinces, 1; Assam, 1; Burma, 1; and Berar, 1.—*The Indian Year Book*, 1927 (The Times of India Press).

[2] The Legislative Assembly Electoral Rule 23.

[3] Section 63E of the Act.

[4] *Ibid.*

[5] South Africa Act, 1909, Section 52.

and may for that purpose require[1] the attendance of its members.[2]

The President of the Assembly had, till the expiration of four years[3] from its first meeting, to be appointed by the Governor-General, but since then has been, and is now, elected, subject to the approval[4] of the Governor-General, by the Assembly from among its members.[5] The procedure[6] of election at present is as follows. If, owing to a vacancy in the office of an elected President,[7] the election of a President becomes necessary, the Governor-General must fix a date for the holding of the election and the Secretary of the Assembly must send to every member thereof notice of the day so fixed. At any time before noon on the day preceding the appointed day any member of the Assembly may nominate

The President of the Assembly.

[1] For instance :

'In pursuance of sub-section (3) of section 63B of the Government of India Act, I, Rufus Daniel, Earl of Reading, hereby require the attendance of Members of the Legislative Assembly in the Assembly Chamber at 11 o'clock on the morning of Saturday, the 3rd September, 1921.

(Sd.) READING,
Viceroy and Governor-General.

[2] Section 63B of the Act.

[3] 'Provided that, if at the expiration of such period of four years the Assembly is in session, the President then in office shall continue in office until the end of the current session, and the first election of a President shall take place at the commencement of the ensuing session.' Section 63C of the Act.

[4] After Mr. V. J. Patel had been re-elected to the Chair on January 20, 1927, the following message from His Excellency the Govenor-General was read out to the Assembly by the Chairman :—

'In pursuance of the provisions of section 63C of the Government of India Act, I, Edward Frederick Lindley, Baron Irwin, hereby signify that I approve the election by the Legislative Assembly of Mr. Vithalbhai Javerbhai Patel as President of the said Assembly.

(Sd.) IRWIN,
Viceroy and Governor-General.'

The Legislative Assembly Debates, January 20, 1927.

[5] Section 63C of the Act.

[6] Indian Legislative Rule 5A.

[7] Or, previously, owing to the expiration of the term of office of the appointed President of the Assembly.

another member for election by handing to the Secretary a nomination paper signed by himself as proposer and by a third member as seconder. He must state in the nomination paper the name of the member nominated and also the fact that the latter is willing to serve as President, if elected.

On the day fixed for election the outgoing President, or, if there is no President, the Deputy President or a Chairman of the Assembly, as the case may be, must read out to the Assembly the names of the persons duly[1] nominated, together with those of their proposers and seconders, and, if only one member has been so nominated, must declare him to be elected. If, however, more than one person has been so nominated, the Assembly must elect its President by ballot.

If only two candidates have been nominated, the candidate who receives the larger number of votes, is declared elected. But if the number of such candidates is more than two and none of them secures at the first ballot more votes than the total number of votes obtained by the other candidates, the candidate obtaining the smallest number of votes is excluded from the election and balloting continues until, by a gradual elimination of candidates securing the smallest number of votes at each ballot, 'one candidate obtains more votes than the remaining candidate or than the aggregate votes of the remaining candidates, as the case may be.'[2] If the election of any member of the

[1] No nomination can be valid unless the person nominated, his proposer and seconder have, before their names are read out by the presiding member, taken the oath, or made the affirmation, of allegiance to the Crown as members of the Assembly.

[2] Sub-rule (5) of the Indian Legislative Rule 5A.

It may be noted in this connexion that if at any ballot 'any of three or more candidates obtain an equal number of votes and one of them has to be excluded from the election under sub-rule (5) (of the Indian Legislative Rule 5A), the determination as between the candidates whose votes are equal, of the candidate who is to be excluded

Assembly to the office of President is not approved by the Governor-General, he is not eligible for nomination as a candidate for the same office during the continuance of the same Assembly.

The Assembly will also have a Deputy President who will preside at its meetings in the absence of the President, and who will be elected, subject to confirmation by the Governor-General, by the Assembly from among its members.[1] The procedure[2] of election in this case is substantially the same as in the previous case. After the members have been sworn in at the beginning of each new Legislative Assembly, the Assembly will elect one of its members to be its Deputy President. A member who wishes to nominate another member for election, must previously ascertain that the latter is willing to serve if elected, and hand to the President a notice containing the name of the latter. The notice must be signed by him as proposer and by some other member as seconder. The President must then read out to the Assembly the names of the candidates duly nominated, together with those of their proposers and seconders, and, if only one person has been proposed for election, declare him to be duly elected. If, however, more than one person have been proposed for election, the Assembly will elect its Deputy President by ballot in the same[3] way as in the case of the election of the President when more than one person is proposed for election.

If there happens to be a vacancy in the office of Deputy President during the continuance of an Assembly, or if the Governor-General disapproves the election of a particular

shall be by drawing of lots.'—Sub-rule (6) of the Indian Legislative Rule 5A.

[1] Sec. 63C. (2) of the Act.

[2] *L.A.S.O.* 5. See also *Legislative Assembly Debates*, vol. ix, pt. 1, 1927, pp. 181 and also 301–303.

[3] A candidate, to be successful, must obtain 'a majority of the total votes recorded.'—*L.A.D.*, vol. ix, pt. 1, 1927, p. 302.

candidate, a fresh election is to be held in accordance with the procedure stated above; but it is provided that a member whose election has been disapproved by the Governor-General must not be proposed again as a candidate during the life of that Assembly.[1]

There is nothing in the Act to prevent a nominated member of the Assembly, whether official or non-official, from being elected to the office of its President or its Deputy President, if he is duly elected by the Assembly and if his election is approved by the Governor-General.

The appointed President might resign his office if he so wished, and might be removed from office by the Governor-General.[2] Ordinarily, he was to hold office till the date of the election of the President under section 63C of the Act. Thus, though the term of office of Sir Frederick Whyte, the appointed President, was to have expired ordinarily early in 1925, he continued, under the proviso[3] to section 63C (1) of the Act, in office till August 24, 1925,—the date on which Mr. V. J. Patel took the Chair at noon as the first elected President of the Assembly. An elected President and a Deputy President will cease to hold office if they cease to be members of the Assembly. They may resign[4] office to the Governor-General if they like, and may be removed from office by a vote of the Assembly with the consent of the Governor-General.[5]

It may not be out of place to refer here to an interesting development of our Constitution. In the first election to the Presidential Chair, which was held on August 22, 1925, there was a contest[6] in which Mr. V. J. Patel defeated his rival candidate, Diwan Bahadur T. Rangachariar by a majority of two votes. The voting was: Mr. Patel, 58; Mr. Rangachariar, 56. In the second election, however,

[1] *L.A.S.O.* 5.
[2] Sec. 63C (3) of the Act.
[3] See footnote 3 on page 25.
[4] Sec. 63C. (4) of the Act.
[5] Sec. 63C (4) of the Act.
[6] *L.A.D*, vol. vi, 1925, p. 22.

which took place on January 20, 1927, there was no contest,[1] and Mr. Patel was unanimously elected President of the third Legislative Assembly. From this fact and from the speeches[2] delivered on that occasion congratulating him on his unanimous re-election to the chair, it may be reasonably concluded that our Assembly has, following the English custom, definitely established a precedent which will in course of time 'develop into a convention that, normally speaking, it will re-elect its former President if he offers himself for election'. In England, 'although the Speaker,' says President Lowell,[3] 'may have been opposed when first chosen, and although he is elected only for the duration of the Parliament, it has now become the invariable habit to re-elect him so long as he is willing to serve.' Thus, the English convention is that until he dies or decides to resign, the former Speaker is re-elected unanimously at the beginning of each new Parliament. Besides, it is also a custom in Great Britain ' to allow the Speaker a walk-over in his constituency at the General Election.'[4] In the course of their valedictory speeches[5] to Mr. President Patel on the closing day of the last session of the second Legislative Assembly, several members had expressed their hope that it would be possible for Mr. Patel's constituency to return him to the Assembly unopposed at the ensuing general election. This would be, they held, a recognition of his services to the country as the first elected President of the Assembly. It would also be in accordance with a good English tradition. Their hope was duly fulfilled: he was returned unopposed[6] by his constituency at the next

[1] *L.A.D.*, vol. ix, pt. 1, 1927, p. 10.
[2] *Ibid.*, pp. 10–13.
[3] *The Government of England*, vol. i, pp. 259–260; see also MacDonagh's *Pageant of Parliament*, vol. i, ch. x.
[4] MacDonagh, *The Pageant of Parliament*, vol. i, p. 126.
[5] *L.A.D.*, vol. viii, 1926, pp. 650–658.
[6] *L.A.D.*, vol. ix, pt. 1, 1927, p. 10

general election. Both the customs referred to above appear to us to be very sound and desirable as they help to maintain unimpaired the independence, the dignity and the impartiality of the Chair. We hope that both of them will be adopted by our provinces.

The qualities that are likely to make a successful President of a deliberative body like our Assembly are many and of a varied character. The President must combine strict impartiality with courtesy, and firmness with tact. Besides, he must have the gift of humour and possess an impressive personality. While in office, he can have no politics. nor should he belong to any party. In the discharge of his duties he can have no political opinions of his own to guide him. On his way to the chair he must, like the Speaker of the English House of Commons and unlike that of the American House of Representatives, 'doff[1] his party

[1] *Vide* Lowell, *The Government of England*, vol. i, pp. 259-260; also MacDonagh, *The Pageant of Parliament*, vol. i, chs. x-xi.

We may note here the following observations by Viscount Bryce: —

'The note of the Speaker of the British House of Commons is his impartiality. He has indeed been chosen by a party, because a majority means in England a party. But on his way from his place on the benches to the Chair he is expected to shake off and leave behind all party ties and sympathies. Once invested with the wig and gown of office he has no longer any political opinions, and must administer exactly the same treatment to his political friends and to those who have been hitherto his opponents, to the oldest or most powerful minister and to the youngest or least popular member. His duties are limited to the enforcement of the rules and generally to the maintenance of order and decorum in debate, including the selection, when several members rise at the same moment, of the one who is to carry on the discussion. These are duties of great importance, and his position one of great dignity, but neither the duties nor the position imply political power. It makes little difference to any English party in Parliament whether the occupant of the chair has come from their own or from the hostile ranks. The Speaker can lower or raise the tone and efficiency of the House as a whole by the way he presides over it: but a custom as strong as law forbids him to render help to his own side even by private advice. Whatever information as to parliamentary law he may feel free to give must be equally at the

colours . . . and wear, instead, the white flower of a neutral political life'. He must always keep in mind that he is the guardian of the authority, honour and dignity of the Assembly and that he has been chosen to maintain its 'traditions of good order, decorum and freedom of opinion'. Furthermore, the President must possess a sound sense of judgment, presence of mind and a power of quick decision. In the execution of his office he must sedulously avoid timorousness or irresolution, and his one constant endeavour should be to win the confidence of all sections of the Assembly in the impartiality of his rulings; otherwise, it may be extremely difficult for him to restore order when there will be 'a clash of wills and tempers' in the House. In this connexion we cannot resist the temptation of quoting an extract from the speech[1] which Mr. Patel delivered in the Assembly as its first elected President. After thanking the members of the Assembly for electing him to the chair, he stated the principles which would guide him in the performance of the duties of his office. 'In the discharge of my duties,' he said, 'I shall, I assure you, observe strict impartiality in dealing with all sections of the House, irrespective of party considerations. From this moment, I cease to be a party man. I belong to no party. I belong to all parties. I belong to all of you and I hope and trust, my Honourable friend, the Leader of the Swaraj Party, will take immediate steps to absolve me from all the obligations of a Swarajist member of this House, if, indeed, it has not been done by implication in consequence of my election to this Chair. Misgivings have been expressed in some quarters, fears have been entertained, that I would not meet the Viceroy, that I would do this, and that I would do that.

disposal of every member.'—*The American Commonwealth* (edition, 1922), vol. i, p. 140. See also *ibid.*, pp. 140–143, and Munro, *The Government of the United States*, ch. xiv.

[1] *Legislative Assembly Debates*, vol. vi, 1925, pp. 36-37.

I assure you, friends, that I am going to do nothing of the kind. If the duties of my office require me to see the Viceroy ten times a day, I am here to do so. If for the discharge of my duties it is necessary that I should see every official member of this House, I will meet him. None need have any doubt about it, and none need have any apprehensions about it.'

Like the Speaker in England, the President must 'abstain from addressing the Assembly except from the chair in the discharge of his presidential duty,' and like him again, he should aim at making 'his office a synonym for dignity and impartiality.'[1] He must not therefore take part in debate like any other member. It may also be stated in this connexion that it is not desirable that he should, during the recesses between sessions of the Assembly, deliver speeches on matters which are, or may in future be, the subject of political controversy. For if he does so, his impartiality will run some risk of being adversely commented upon. In short, during his tenure of office, he should so behave both within and without the House that every member might forget that he ever belonged to any party. In England, even at a general election, says Prof. Redlich,[2] 'the Speaker only offers himself as a candidate by written communications and refrains in his election address from touching upon political questions.' And 'from the moment of election he discards every outward tie that has hitherto bound him to his party; he refuses to enter a political club, and, both within the House and without, abstains from expressing any political opinion.'[3] When Mr. Speaker Gully's seat at Carlisle was unsuccessfully contested in 1895 by a candidate set up by the

[1] See Redlich, *The Procedure of the House of Commons*, vol. ii, p. 131.

[2] *The Procedure of the House of Commons*, vol. ii, p. 133.

[3] *Ibid.*, pp. 133–134.

Unionist Party, the former did not make any reference to politics in his address to his constituency.[1] 'As Speaker of the House of Commons,' says Mr. MacDonagh,[2] 'he could have nothing to say to party controversy. Like his predecessors, he recognized that a Speaker cannot descend into the rough strife of the electoral battle, not even to canvass the electors, without impairing the independence and the dignity of the Chair of the House of Commons.'

The impartiality of the English Speaker is also partly secured by the observance of a convention[3] that 'after resigning the chair he ought not to re-appear in the House (of Commons) either as one of the Government or as a private member.' It is hoped that our President will establish a similar convention in India after he will have resigned his office, or decided not to stand for it again.

The President has only a casting vote which he must exercise in the case of an equality of votes.[4] Ordinarily, all questions in the Assembly are determined by a majority of votes of the members present other than the person presiding.[5] In the English House of Commons also, the Speaker nowadays votes only if a tie occurs while he is in the chair. 'If the numbers in a division are equal,' says Sir Erskine May,[6] 'the Speaker, who otherwise does not vote, must give the casting voice. In the performance of this duty, he is at liberty to vote like any other member, according to his conscience, without assigning a reason; but, in order to avoid the least imputation upon his impartiality, it is usual for him, when practicable, to vote in such a manner as not to make the decision of the house

[1] See MacDonagh, *The Pageant of Parliament*, vol. i, p. 127.
[2] *Ibid.*
[3] Redlich, *The Procedure of the House of Commons*, vol. ii, p. 132.
[4] Section 63D(4) of the Act.
[5] *Ibid.*
[6] *Parliamentary Practice*, 12th edition, p. 330.

final, and to explain his reasons which are entered on the journal.'[1]

It is obvious from what has been stated before that, in creating the office of President of the Assembly, the framers of the Indian Constitution chose[2] the English model for imitation rather than the American; and we believe that, in view of the peculiar circumstances of India and the complexity of its political problems, they acted very wisely in doing so. It would have been most unfortunate if the office of President had been, like the American Speakership, a political one. And we may add that the principles of conduct which have guided successive English Speakers, and the strict observance of which has made, in the words of a foreign critic, the Speaker's office 'a synonym for dignity and impartiality all over the Anglo-Saxon world,' should be faithfully followed by our President.

[1] Sir Erskine May cites in this connexion the following memorable statement of Mr. Speaker Addington made on May 12, 1796: —

'Upon all occasions when the question was for or against giving to any measure a further opportunity of discussion, he should always vote for the further discussion, more especially when it had advanced so far as a third reading; and that when the question turned upon the measure itself—for instance, that a bill do or do not pass—he should then vote for or against it, according to his best judgment of its merits, assigning the reasons on which such judgment would be founded.'

We may also note the following :—

'The only vote which a Speaker now gives is a casting vote, should the numbers on each side in a division be equal. It is the custom for the Speaker to give his casting vote in such a way as to avoid making the decision final—thus giving the House another opportunity of considering the question—and to state his reasons which are entered in the *journals*.'—Michael MacDonagh, *The Pageant of Parliament*, vol. i, p. 129; see also Josef Redlich, *The Procedure of the House of Commons*, vol. ii, p. 135.

[2] Lowell, *The Government of England*, vol. i, ch. xii; also Bryce, *The American Commonwealth*, vol. i, pt. 1, ch. xiii; MacDonagh, *The Pageant of Parliament*, vol. i, chs. x–xi; Munro, *The Government of the United States*, ch. xiv; May, *Parliamentary Practice*, chs. 7 and 14; Redlich, *The Procedure of the House of Commons*, vol. ii, part vi, chs. i–ii.

It is worthy of note here that it is not merely the President who is interested in upholding the prestige, dignity and authority of the Chair, but also every section of the Assembly. Any adverse reflection upon the impartiality of the Chair is liable to be strongly condemned by the House. In September, 1928, Mr. President Patel gave a certain ruling on a point of order raised by Pandit Motilal Nehru in connexion with the 'Public Safety (Removal from India) Bill, 1928'.[1] Some official members were dissatisfied with the ruling, and used expressions in the lobby impugning the conduct of the President.[2] This matter having been published in the *Pioneer* by its Simla Correspondent, it was brought to the notice of the Assembly by Pandit Motilal Nehru.[3] As a result, strong resentment was expressed[4] at the conduct of those officials both by the President and some leading members of the House. The unfortunate controversy was ended, however, by an important statement[5] made by Mr. Crerar, Home Member of the Government of India, on the relations between the Chair and the House and the Government. In the course of this statement, Mr. Crerar, as leader of the House, expressed his full regret and that of the officials concerned, and assured both the President and the House that, so far as the Government could, it would take steps to ensure that there would be no recurrence of similar conduct on the part of its officials. Furthermore, he deplored and condemned, in common with other members of the House, all comments[6]

[1] *Vide* the *Statesman* of September 16 and 25, 1928 (dak edition); also *L. A. D.*, September 14, 1928.

[2] *Ibid.* [3] *Ibid.* [4] *Ibid.*

[5] *Vide L. A. D.* of September 22, 1928.

[6] Such comments were published in September, 1928, in the *Times of India* (Bombay) and the *Daily Telegraph* (London) by their Simla Correspondents. The action of these correspondents was strongly disapproved and condemned by every section of the Assembly Opportunity was given to them of tendering to the Chair and the House their unqualified apology. As they failed to do so, the President directed that with effect from the date of the adjournment of the

in the Press which, directly or indirectly, reflected adversely upon the impartiality of the Chair; and declared that the President would have the full support of the Government in any action which he (i.e. the President) might think right to take, for vindicating the authority of the Chair, against those who would impute partiality to him. In conclusion, he said:

'It is the earnest desire of myself, as of those for whom I speak, that, whatever from time to time may be our political disagreements, we may all unite to invest this House with an honourable tradition in the conduct of its affairs, and see that by lending our assistance to the Chair, who is the natural guardian of all interests in the House, this tradition should be constantly maintained.'

The Salaries of the President and the Deputy President.

The Act provided that a President and a Deputy President would receive such salaries as might be determined, in the case of an appointed President, by the Governor-General, and in the case of an elected President and a Deputy President, by Act of the Indian Legislature.[1] Accordingly, the salary of an appointed President was fixed by the Governor-General at Rs. 50,000 a year,[2] and that of an elected President has been fixed by the Legislative Assembly (President's Salary) Act, 1925, at Rs. 4,000 a month.[3] The

House *sine die* (i.e. from September 25, 1928), the Press passes granted to them would stand cancelled and that no notice papers, Bills, etc., would be sent to them until further directions from him. He added, however, that the correspondents concerned or their papers would be eligible for renewing their applications, and that these (i.e. the applications) would be considered by him if in the meantime a full, frank and unqualified apology to the Chair and the House was forthcoming in terms approved by him and published in such newspapers and in such manner as he might approve.—*Vide Legislative Assembly Debates*, September 25, 1928, pp. 1422–23.

[1] Sec. 63 C (5) of the Act.

[2] See Earl Winterton's statement in the House of Commons on the cost of the Reforms in India, in *The Englishman* (Aug. 2, 1922, dak ed.)

[3] See in this connexion the Legislative Assembly Proceedings of February 11 and 18, 1925.

Deputy President receives Rs. 1,000 a month for the periods during which he is engaged on work connected with the business of the Legislative Assembly.[1] The Speaker in England receives a salary of £5,000 a year, payable by statute directly out of the Consolidated Fund without the need of any annual parliamentary sanction. The salary is free of all taxes.[2] Besides, he enjoys a residence in the Palace of Westminster, 'furnished by the State and free of rent, rates and taxes, with coal and light supplied.'[3] He is the first commoner, and now, in respect of rank and precedence, the sixth subject, of the realm.[4] It does not appear that our President obtains anything in addition to his salary. In the Indian Warrant of Precedence, he has rank next to the President of the Council of State, but just before the Chief Justice of a High Court other than that of Bengal, and his place is twelfth from that of the Governor-General.[5]

The President is a whole-time officer of the Assembly, in the sense that he must devote all his time to the duties of his office. It is distinctly laid down in the Legislative Assembly (President's Salary) Act, 1925, that 'the elected President of the Legislative Assembly shall not during his

[1] See Earl Winterton's statement in the House of Commons on the cost of the Reforms in India.

[2] MacDonagh, *The Pageant of Parliament*, vol. i, p. 135. According to Prof. Redlich, the Speaker's salary continues even after a dissolution, lasting until the election of a Speaker for the new Parliament.—*The Procedure of the House of Commons*, vol. ii, p. 134.

[3] MacDonagh, *The Pageant of Parliament*, vol. i, p. 135.

When a Speaker retires from office 'he is practically sure of a peerage and a life pension of £4,000 a year.'—Redlich, vol. ii, p. 134. In addition to his salary, a Speaker gets 'an allowance of £100 a year for stationery and receives £1,000 for equipment' on his first appointment.—Redlich, vol. ii, p. 134; also MacDonagh, vol. ii, p. 135.

[4] Whitaker's *Almanack*, 1926, p. 131.

The order is: Archbishop of Canterbury, Lord High Chancellor, Archbishop of York, Prime Minister, Lord President of the Council, the Speaker of the House of Commons, etc.

[5] *The Indian Year Book*, 1927, p. 536.

tenure of that office practise any profession or engage in any trade or undertake for remuneration any employment other than his duties as President of the Legislative Assembly.'[1] This does not mean, however, that he is precluded from undertaking duties of an honorary nature. The intention of the authors of the Act fixing the salary of the President, was that 'he should undertake nothing which might possibly raise a suspicion of impartiality.'[2] It was also held by many of them that no person who might have 'any personal interest in the deliberations of the Assembly should be allowed to guide its deliberations in the capacity of its chief.'[3] Thus it is not open to the President to accept, or to continue in, the office of a director of a joint-stock company, and it is doubtful whether a person who holds a large number of shares in such a company, can be elected, or can continue as, President.[4]

The Joint Select Committee on the President of the Assembly.

The Joint Select Committee had stated in its Report[5] on the Government of India Bill that the President of the Legislative Assembly should for four years be a person appointed by the Governor-General. He should be qualified by experience in the House of Commons and a knowledge of parliamentary procedure, precedents, and conventions. He should be the guide and advisor of the Presidents of the provincial Legislative Councils, and he should be chosen with a view to the influence which, it was hoped by the Committee, he would have on the whole history of parliamentary procedure in India. The first appointment was made in accordance with this recommendation, and it

[1] See in this connexion the Legislative Assembly Proceedings of February 11 and 18, 1925.
[2] *Ibid.*
[3] The Legislative Assembly Proceedings, February 18, 1925.
[4] *Ibid.*
[5] Report of the (Parliamentary) Joint Select Committee on the Government of India Bill, Clause 20.

appears to us from the testimony of both official and non-official members of the Assembly that Sir Frederick Whyte discharged to the utmost the very heavy responsibilities that had been laid upon him as the first President of the Assembly.

The functions of the Deputy President.

We have previously referred to the office of Deputy President of the Assembly and seen how election to it takes place. The Deputy President presides at meetings of the Assembly in the absence of the President and has, when so presiding, all the powers of the President.[1] There is an unwritten convention in the House that he should be precluded from taking part in debate, and must maintain an attitude of strict neutrality in political contests.[2] This is considered necessary for the purpose of ensuring his absolute impartiality. As the Chairman of Committees in the British House of Commons, who takes the chair, as Deputy Speaker, during the absence of the Speaker, follows the latter as his model so far as his conduct in the Commons is concerned, so our Deputy President is expected to take the President as his model so far as his conduct in the Assembly is concerned. Defining his position and contrasting it with that of the English Deputy Speaker, Sir Frederick Whyte, our first President, spoke in the Assembly in 1921 as follows[3]:—

'In point of fact, the House of Commons has no Rule nor Standing Order which forbids the Deputy Speaker . . . to take part in debate; but the conditions of his office and the established tradition of the House effectively preclude him from doing so. . . . In the matter of the analogy between the Deputy Speaker and the Deputy President, I would suggest to the Assembly the desirability of following faithfully the spirit of Westminster but of modifying to its own

[1] Indian Legislative Rule 4.
[2] *Vide India's Parliament*, vol. ii, pp. 3-4.
[3] *Ibid.*

needs the letter of the House of Commons practice. To illustrate the contrast between the two positions, I must enter upon a description of the office of the Deputy Speaker[1] in the House of Commons. . . .

'At Westminster, the Chairman of Committees, that is to say, the Deputy Speaker, is selected[2] by the Government: here he is the choice of the Chamber itself. At Westminster, he actually presides over the House, in a busy session, for at least as many hours as the Speaker himself: here he can never be called upon, except in very exceptional circumstances, to eclipse the President in the number of hours during which he occupies the chair. At Westminster, when not presiding over the deliberations of the House (in Committee), he is fully engaged in supervising Private Bill Legislation, for which he is responsible as Chairman of the Committee on Unopposed Bills: here no such function can be assigned to the Deputy President, for the procedure known as Private Bill Legislation does not exist. At Westminster, finally, as Chairman of the Court of Referees, the Deputy Speaker discharges another important function for which there is no Indian parallel. The Assembly will thus realize that the position of the Deputy Speaker in England is very onerous. He, indeed, is the hardest-worked functionary in the House of Commons; and, even if he wished, and even if tradition permitted, he would be precluded from any active share in current controversy by the weight of his official duties. . . .

'It is for this Assembly to evolve its own practice, and to establish its own institutions for the discharge of its duties as a legislative body. Your Deputy President

[1] The salary of the Deputy Speaker is £2,500 per annum.

[2] The Chairman of Committees is appointed by the House of Commons at the beginning of a new Parliament for the whole period of its duration, on the nomination of the leader of the House.—MacDonagh, *The Pageant of Parliament*, vol. ii, pp. 150-151; also May, *Parl. Prac.*, pp. 406–407.

carries upon his shoulders the obligation to uphold the even-handed impartiality of the chair even when he himself is not the occupant of it. That obligation is laid upon him by the will of his colleagues when they elect him; and it should ever be his first care to observe it. It must be obvious to those who survey his position that he does not, and cannot, enjoy perfect freedom to take part in debate, and in accepting election to the office, he also accepts the sacrifice of many otherwise tempting parliamentary opportunities.'

Chairmen.

We have no officer in the Assembly corresponding to the Deputy Chairman of the House of Commons, 'who, whenever the Chairman of ways and means is absent from the chair, is entitled to exercise all his powers, including those as Deputy Speaker.'[1] Now it may so happen that, for some reason or other, both the President and the Deputy President may not be in a position to preside at a meeting of the Legislative Assembly. In order to prevent any possible inconvenience from such unavoidable absence of both these officers, it has been provided by a Rule[2] made under the Act that at the beginning of every session, the President of the Assembly will nominate from among its members a panel of not more than four Chairmen, any one of whom may preside over the Assembly in the absence of the President and the Deputy President, when so requested by the President or, in his absence, by the Deputy President. A Chairman so nominated will hold office until a new panel of Chairmen is nominated.[3] If, however, there is a vacancy in the office of President and there is no person authorized and competent to preside over the Assembly, the Governor-General must appoint[4] from among its members a Chairman to

[1] May, *Parliamentary Practice*, 12th edition, p. 181. The salary of the Deputy Chairman is £1,000 per annum.
[2] Indian Legislative Rule 3. [3] *Ibid.* [4] *Ibid.*

preside until a President has been duly elected and the assent of the Governor-General to the election has been communicated to the Assembly. Such a situation occurs ordinarily after a general election following a dissolution of the Assembly. Thus when the third Legislative Assembly met for the first time on January 19, 1927, and there was no person competent to preside, the Secretary of the Assembly read out a message from the Governor-General that the latter had appointed Mr. M. Ruthnaswamy (Nominated: Indian Christians) to be its Chairman.[1] Mr. Ruthnaswamy accordingly occupied the chair, after taking the necessary oath of allegiance. Any Chairman of the Assembly, when presiding over it, can exercise all the powers of the President.[2]

The Secretary of the Assembly.

The Secretary of the Legislative Assembly and such assistants of the Secretary as the Governor-General considers to be necessary, are appointed by the Governor-General, and hold office during his pleasure.[3] Subject to the control of the President, the Secretary may authorize any of his assistants to execute such of his duties as he may direct.[4] Hitherto (1928) the Secretary of the Assembly has been no other person than the Secretary[5] of the Legislative Department of the Government of India, and as such has been a nominated member of the Assembly. Mr. President Patel having raised a very serious objection[6] to the continuance

[1] The Legislative Assembly Proceedings of January 19, 1927.
[2] Indian Legislative Rule 4. [3] Indian Legislative Rule 5.
[4] *L.A.S.O.* 2.
[5] *Vide* the Government of India's Despatch to the Secretary of State on the Assembly Establishment, in *Legislative Assembly Debates*, September 17, 1928, pp. 922-928. At the request of Mr. President Patel the Viceroy has discontinued the practice of nominating the Secretary to the Assembly from its September (1928) session.—*Vide* Mr. Patel's statement on the subject in the *Statesman* (dak ed.) of September 7, 1928.
[6] Mr. President Patel's objection was based chiefly upon the following grounds :—

'The President is an impartial interpreter and administrator

of this arrangement, a scheme[1] for the separation of the

of the rules of the House, but these rules are not made by it, nor has it the power to amend them to suit its requirements . . . . In the interpretation of the rules, the President has to rely on the advice of the Secretary of the Assembly, and in the administration thereof by the office he has to rely on the efficiency, independence and reliability of the staff and the Secretary. Every member of the House has in the discharge of his duties to deal both with the Secretary and his staff, and if he fails to get satisfaction, the fault is naturally laid at the door of the President, who is supposed to be the controlling authority. It goes without saying that if the business of the House is to be carried on to its satisfaction, the Secretary and the staff must in some form be responsible to the House and its President, and not be subordinate to any outside authority. The President must feel that he is getting independent and impartial advice from the Secretary ; the Secretary and the staff must also feel that they are there solely to serve and further the best interests of the Assembly.

As matters stand at present, the Secretary of the Assembly owes no allegiance to it or to the President ; he is for all practical purposes responsible to the Governor-General in Council. In every question at issue between the Government and the representatives of the people, he is bound to identify himself with Government. He is invariably nominated a Member of the House and, as such, he joins a party, votes with them, works for them, and is one of them. Neither the Assembly nor its President has any authority over him and can, therefore, in any way control his conduct in any matter connected with the Assembly. The President cannot in the nature of things, therefore, regard the advice of the Secretary in connexion with the business of the Assembly as coming from a wholly impartial, unbiassed and independent source, and it is natural for the same reason that the Assembly should desire radical reform in the present state of things. . . . As regards the staff, I will only make one observation. My experience is that they feel difficulty in approaching the President freely, or in seeking his advice in the discharge of their duties lest, by doing so, they should run the risk of offending their official superiors to whom they are subordinate. . . . Apart from these considerations, the very idea that the Secretary of the Assembly should be occupying a position of subordination not to the House but to an outside authority is in itself, to say the least, anomalous.'—Quoted from Mr. Patel's speech in the Legislative Assembly on September 5, 1928 ; *vide Legislative Assembly Debates*, September 5, 1928, pp. 219-220.

It appears from a letter of Mr. Patel to the Government of India, dated August 17, 1927, that Sir Frederick Whyte also was in favour of the constitution of a separate office for the Legislative Assembly —*Vide Legislative Assembly Debates*, September 17, 1928, p. 929.

[1] *Vide* the Government of India's Despatch to the Secretary of State on the subject, in *Legislative Assembly Debates*, September 17, 1928, pp. 922-928.

Secretariat of the Assembly from the Legislative Department has been forwarded by the Government of India to the Secretary of State for India for the latter's consideration. According to the scheme there will be a Secretary, a Deputy Secretary and an Assistant Secretary of the Assembly. They will be all appointed by the Governor-General. The Secretary will correspond[1] to the Clerk[2] of the British House of Commons, and the Deputy Secretary and the Assistant Secretary will correspond to the Clerk Assistants. 'The Secretary will be in close relations, on the one hand, with the President of the Assembly and, on the other hand, with the leader of the House, but he will be subordinate to neither.' [3]

It may also be mentioned here that since the publication of the Government of India's scheme, the Legislative Assembly has itself recommended[4] a somewhat modified scheme for the separation of its Secretariat. Presumably, this scheme too has been transmitted by the Government of India to the Secretary of State.[5] According to it, the Secretariat of the Assembly 'will not be an attached department under the control of any member of the Executive Council', as was suggested by the Government of India in its scheme, 'but a separate department in the portfolio of the Governor-General in the same way as the Foreign and Political Department is (now) included. The principal officers of the new department will be appointed by the

[1] *Vide* the Government of India's Despatch to the Secretary of State on the subject, in *Legislative Assembly Debates*, September 17, 1928, pp. 922-928.

[2] See Prof. Redlich's *Procedure of the House of Commons*, vol. ii, pp. 172-179, for the position and functions of the Clerk; also May's *Parliamentary Practice*, pp. 184-185.

[3] The Government of India's Despatch to the Secretary of State on the question of the Assembly establishment.—*Vide Legislative Assembly Debates*, September 17, 1928, pp. 922-928.

[4] *Vide* the *Statesman* (Dak edition) of October 16, 1928.

[5] See *ibid.*

Governor-General, in consultation with the President, while other members[1] of the establishment' will be appointed by the President from among those who will be recommended by the Public Service Commission, will be subject to discipline by the President acting in consultation with the Secretary of the Assembly, and will have a right of appeal to the Governor-General. Both the schemes are now under the consideration of the Secretary of State whose decision thereon is likely to be communicated to the Government of India by December 1, 1928.[2]

The Marshall[3] of the Assembly, a retired officer of the Indian Army, corresponds to a certain extent to the Serjeant-at-arms of the House of Commons. He is appointed by the Governor-General in Council, and practically belongs to the personal staff of the President.[4] We may add here that so far no provision has been made for the appointment of a separate legal adviser for the President corresponding to the Counsel to the English Speaker.[5]

[1] According to the Government of India's scheme, these members are to be appointed by the Secretary of the Assembly in the first instance 'from the members of the Legislative Department who will be placed at his disposal for that purpose. Thereafter the establishment will be recruited by the Secretary of the Assembly in the manner in which the ministerial establishments of the Government of India Secretariat are recruited, and will serve under precisely the same conditions in respect of pay, discipline and the like as those establishments.'—*Vide* the Government of India's Despatch on the subject to the Secretary of State in *Legislative Assembly Debates*, September 17, 1928, p. 925.

[2] It may be mentioned here that the sanction of the Secretary of State has since been received for the appointment of a Secretary, a Deputy Secretary and an Assistant Secretary of the Legislative Assembly, and that he has approved in principle the proposal of the Government of India in connexion with the separation of the Assembly establishment.—*Vide* the *Statesman* (Dak edition), December 16, 1928.

[3] *Vide* the Government of India's Despatch to the Secretary of State on the question of the Assembly establishment, in the *Statesman* of September 19, 1928.

[4] *Ibid.* [5] *Ibid.*

CHAPTER III

LEGISLATURES—THE COUNCIL OF STATE

Constitution of the Council of State—The original scheme about its character and composition—Views of the Joint Select Committee regarding the scheme—Constituencies entitled to representation in the Council of State—Representation of special interests and communities in the Council—The nominated members of the Council—Their terms of office—Duration of the Council—The President of the Council—Nomination of a panel of Chairmen for the Council—The appointment of the President by the Governor-General, an anomaly—The President of the Senate in Australia and in the Union of South Africa—Concluding remarks.

Constitution of the Council of State.

The Council of State consists at present of sixty members, of whom thirty-three are elected and the rest are nominated.[1] Of the non-elected members not more than twenty may be officials,[2] and one must be a person nominated as the result of an election held in Berar.[3] The maximum number of members in the case of the Council of State has been fixed by statute at sixty.[4]

[1] Council of State Electoral Rule 3.

[2] In actual practice the Governor-General refrains from nominating the full number of officials allowed by the Act and nominates non-officials in their place. The number of officials is now (1927) only 17. In the case of the first Council of State also, the number was reduced to 17.—See the Viceroy's farewell address to the first Council of State, delivered on September 17, 1925.

[3] The representative of Berar, though technically a nominee, is for all practical purposes an elected member. He is first elected by the Council of State constituency in Berar, which comprises the Berar Division minus the Melghat *taluk* of the Amraoti District, and is thereafter nominated to the Council of State.—*The Berar Electoral Rules*.

[4] Section 63A of the Act.

The original scheme about its character and composition.

The original intention of the authors of the Report on Indian Constitutional Reforms was to create a Council of State which would be 'the supreme legislative authority for India on all crucial questions, and also the revising authority upon all Indian legislation'.[1] Besides, it was their desire that the Council 'should develop something of the experience and dignity of a body of Elder Statesmen'.[2] In order that this body might effectually discharge its functions as 'the final legislative authority in matters which the Government regarded as essential,' they proposed to retain an official majority in its composition.[3] It was hoped by them that with the help of this official majority the Government would be able to get a Bill passed by the Council of State in cases of emergency, so certified by the Governor-General in Council, and also when the Legislative Assembly had refused leave to the introduction of a Bili or had thrown out a Bill which the Government had regarded as necessary.[4]

In pursuance of this recommendation it was provided in the original Government of India Bill introduced into the House of Commons by Mr. Montagu, the then Secretary of State for India, that the Council of State would consist of fifty-six members (exclusive of the Governor-General who would be its President); and that the number of non-elected members thereof would be thirty-two, of whom at least four would be non-officials, and the number of elected members would be twenty-four.[5]

The Joint Select Committee of both Houses of Parliament appointed to consider the Bill, stated in its Report,[6]

[1] *The Montagu-Chelmsford Report*, para. 278.
[2] *Ibid.*, para 278.
[3] *Ibid.*, para. 277. [4] *Ibid.*, para. 279.
[5] Section 15 of the Government of India Bill, 1919, presented by Mr. Secretary Montagu.
[6] Report of the Joint Select Committee, Clause 18.

'a constitutional document of first-rate importance,' that it did not accept the device,[1] in the Bill as drafted, of carrying Government measures through the Council of State without reference to the Legislative Assembly, in cases where the latter body could not be got to assent to a law which the Governor-General considered essential. It held that there was no necessity to retain the Council of State as an organ for Government legislation and that it should be constituted from the commencement as a true second Chamber.[2] It had however no hesitation in accepting the view[3] that the Governor-General in Council should in all circumstances be fully empowered to secure legislation which was required for the discharge of his responsibilities, but it thought it was unworthy that such responsibility should be concealed through the action of a Council of State specially devised in its composition to secure the necessary powers. It believed that in such a case it would add strength to the Government of India to act before the world on its own responsibility. It therefore amended the relevant clause of the original Bill in the way[4] in which we find it in the Act.

Views of the Joint Select Committee about the scheme.

Our second Chamber, as we have seen above, consists partly of elected members and partly of nominated members. The principle underlying its composition is

[1] The original Bill contained the following clause (Section 20 (4)):—

'When the Governor-General in Council certifies that it is essential for the safety, tranquillity, or interests of British India or any part thereof, or for the purpose of meeting a case of emergency which has arisen, that any law shall be passed, the Council of State shall have power to pass that law without the assent of the Legislative Assembly, and it shall, if so passed, have the like effect as laws passed by both Chambers.'

[2] Report of the Joint Select Committee, Clause 18.

[3] *Ibid.*, Clause 26.

[4] The Government of India Bill (as amended by the Joint Select Committee), Section 18.

a sort of compromise between the Canadian system of pure nomination and the Australian system of entire election.

Constituencies entitled to representation.

Constituencies entitled to representation in the Council of State are as shown in the following table[1] :—

Provinces	Non-Muhammadan	Muhammadan	European Commerce	Sikh	General	Total
Madras	4	1	...	...	...	5
Bombay... ...	3	2	1	...	...	6
Bengal	3	2	1	...	...	6
United Provinces ...	3	2	...	...	...	5
Punjab	1	2[2] or 1	...	1	...	4[2] or 3
Bihar and Orissa ...	2 or 3[3]	1	...	...	...	3 or 4[3]
Central Provinces ...	...	...	...	...	1	1
Burma	...	...	1	...	1	2
Assam	1[4]	or 1[4]	...	...	...	1
Total ...	...	...	...	...	...	33

[1] The Council of State Electoral Rule 4, Schedule I.

[2] The Muhammadan community in the Punjab is entitled to elect two Muhammadans to the first, third, fifth and succeeding alternate Councils of State, and only one Muhammadan to the second, fourth and succeeding alternate Councils of State.

[3] The Bihar and Orissa non-Muhammadan constituency elects two members to the first, third and succeeding alternate Councils of State ; and three members to the second, fourth and succeeding alternate Councils of State.

[4] Assam is entitled to elect a non-Muhammadan to the first, third and succeeding alternate Councils of State and a Muhammadan to the second, fourth and succeeding alternate Councils of State.

Representation of special interests and communities.

From the above table it is evident that special representation has been given to Muhammadans and Sikhs and to European Commerce in the Council of State.

Before the date of the first meeting of every new Council of State, the Governor-General makes such nominations as are necessary to complete the Council.[1]

Nominated members: their terms of office.

A nominated non-official member is to hold office for the duration of the Council of State to which he is nominated.[2] The term of office of an official member is for the duration of the Council to which he is nominated or for such shorter period as the Governor-General may determine at the time of his nomination.[3] A vacancy in the case of a nominated member is filled by the Governor-General by another nomination.[4]

Duration of the Council.

While the second Chambers of England, France, the United States, Canada and Australia[5] have a sort of continuous existence, the normal duration of our Council of State is limited to a period of only five years from its first meeting. The Governor-General can, however, dissolve it before the date of its expiry by effluxion of time; and he can also prolong its life for a further period if he thinks it necessary in special circumstances.[6] As we have seen in the case of the Legislative Assembly, the Governor-General is bound, within six months, or with the sanction of the Secretary of State within nine months, to appoint a date for its next session.[7]

[1] Council of State Electoral Rule 27 (3).
[2] *Ibid.*, 23 (1). [3] *Ibid.*, 23 (2).
[4] *Ibid.*, 26 (2).
[5] 'A noticeable attribute of the Senate, but one which it shares with second Chambers in general, is that of "perpetual existence." Except in the event of a constitutional deadlock, it (i.e. the Senate of Australia) cannot be dissolved'.—Marriott, *Second Chambers*, p. 171.
[6] Section 63D of the Act. [7] *Ibid.*

The President of the Council of State is appointed by the Governor-General from among its members.[1] Besides, the Governor-General has been empowered by the Act to appoint other persons to preside in such circumstances as he may direct.

The President of the Council.

Accordingly, at the beginning of every session, the Governor-General nominates from among the members of the Council a panel of not more than four Chairmen, any one of whom may preside over the Council in the absence of the President when so requested by the latter, and can, when presiding over it, exercise the powers of the President.[2]

The appointment of the President by the Governor-General: an anomaly.

It appears to be rather a strange anomaly that, while the Legislative Assembly and the Governors' Legislative Councils have had the power, from after the first four years of the Reforms, to elect their Presidents from among their members, subject to the approval of the Governor-General or the Governor, as the case may be, the President of such a dignified body as the Council of State should continue to be appointed by the Governor-General. The Senate in Australia[3] as well as in the Union of South Africa[4] chooses its President from among its members. He ceases to hold his office if he ceases to be a Senator, or if he is removed from office by a vote of the Senate, or if he resigns his office. In the interests of its dignity and influence, the second Chamber of India should be placed, in respect of the appointment and removal of its President, on

[1] Section 63A of the Act.

The late Sir Alexander Muddiman was the first, and Sir Montagu Butler the second, President of the Council of State. On the latter's appointment to the office of Governor of the Central Provinces in 1925, Sir Henry Moncrieff Smith, the present (1928) incumbent, was appointed President of the Council of State.

[2] Order of the Governor-General under Section 63A (2) of the Act.—*Council of State Manual*, 1926, chapter iii.

[3] The Commonwealth of Australia Constitution Act, 1900, Section 17.

[4] South Africa Act, 1909, Section 27.

a similar footing with the second Chambers in Australia and South Africa. It is hoped that the existing anomaly will be removed at the next revision of the Act.

Curiously enough, there is no provision in the Government of India Act relating to the salary of the President of the Council of State. But it appears from a statement [1] made in the House of Commons by Earl Winterton as Under-Secretary of State for India that the salary of the President has been fixed at Rs. 50,000 a year.

The Secretary of the Council of State. The Secretary of the Council of State and his assistants are appointed by the Governor-General and hold office during his pleasure.

A few remarks on the Council of State. In the course of his speech at the inauguration of the India Legislature, His Royal Highness, the Duke of Connaught, observed [2] that in the Council of State it had been the intention of Parliament to create a true Senate, a body of elder statesmen endowed with mature knowledge, experience of the world and the consequent sobriety of judgment. Its functions would be to exercise a revising but not an overriding influence for caution and moderation, and to review and adjust the acts of the larger Chamber. Opinions differ as to how far the Council of State has fulfilled the responsible rôle assigned to it by the Constitution. It has been said that in dealing with the measures that have come before it, it has shown enough of moderation but very little of fearlessness or the capacity for sound judgment. Even if it be granted that it has throughout been 'animated by a lofty sense of duty and a steadfast determination to advance the interests of India', it must also be admitted that it has not so far been able to inspire public confidence either in its ability or in its sense of devotion to those interests.

[1] See foot-note 2 on page 36 *ante*.

[2] See the Viceroy's farewell address to the first Council of State on September 17 1925.

Probably, one fault of our Council of State is the so-called fault attaching to all second chambers by the very nature of their function as revising bodies. But it is also probable that its composition is largely responsible for this lack of public confidence in it. The excess of the number of its elected members over that of the nominated members is very small. Secondly, the elected members represent only a very small section of the population of India, the electoral qualifications for the Council being very high. The total number[1] of electors in British India for the second general election to the Council of State was only 32,126. It is hoped that in the next revision of the Act provision will be made for the reconstitution of the Council in such a way as will enable it to command public confidence both in its ability and integrity.

[1] *Vide East India (Constitutional Reforms—Elections* Cmd. 2923, 1927), published by His Majesty's Stationery Office.

CHAPTER IV

LEGISLATURES—THE PROVINCIAL LEGISLATIVE COUNCILS

The Provinces of British India—Governors' Provinces—Chief Commissionerships—Composition of a Governor's Legislative Council—The Governor of a Province and his Legislative Council—Constitution of the Legislative Councils of Madras, Bombay, Bengal, the United Provinces, the Punjab, Bihar and Orissa, the Central Provinces, Assam and Burma—Representation of special classes and interests in the Legislative Councils—Duration of a Legislative Council—The President of the Legislative Council—Its Deputy President—Nomination of a panel of Chairmen for each Legislative Council—Terms of office of the President and the Deputy President—Their salaries.

The provinces of British India.

British India has been divided for administrative purposes into nine major and seven minor provinces. The nine major provinces are Madras, Bombay, Bengal, the United Provinces, the Punjab, Burma, Bihar and Orissa, Assam and the Central Provinces. They are each governed, in relation to Reserved subjects, by a Governor in Council, and in relation to Transferred subjects, except in special circumstances, by the Governor acting with Ministers, and are distinguished as Governors' Provinces.[1] The Province of Burma had at first been excluded from the scheme of Reforms introduced by the Act of 1919; but it was constituted a Governor's Province under the Government of India Act with effect from January 2, 1923.[2]

Governors' Provinces.

[1] Section 46 of the Act.

[2] The province of Burma was constituted a Governor's Province under Sub-section 1 of Section 52A of the Act. See notification No. 225, dated October 7, 1921, in the *Gazette of India* (Extraordinary) 1921, p. 381, and notification No. 1192, dated January 2, 1923, in the *Gazette of India* (Extraordinary) 1923, p. 37 ; also *The Government of India Act*, published by the Government of India, pp. 251-253.

Chief Commissionerships.

The seven minor provinces are the North-West Frontier Province, British Baluchistan, Delhi, Ajmer-Merwara, Coorg, the Pargana of Manpur,[1] and the Andaman and Nicobar Islands. They are each administered by a Chief Commissioner and are, except Coorg,[2] without any Legislative Council.

Composition of a Governor's Legislative Council.

Each of the nine Governors' Provinces has a Legislative Council consisting of the members of the Executive Council of the province concerned and of the members nominated or elected in accordance with Rules made under the Act. Not more than twenty per cent. of the members of each Council can be officials, and, except in the case of the Burma Council in which the minimum percentage of elected members has been fixed at sixty, at least seventy per cent. must be elected members. The Governor of a province cannot be a member of the provincial Legislative Council, but has the right of addressing the Council and may for that purpose require the attendance of its members.[3]

In addition to the ordinary members of his Legislative Council, a Governor may nominate, for the purpose of any Bill, not more than two persons (or only one in the case of Assam), having special knowledge or experience of the subject-matter of the Bill, who will, in relation to the Bill, have, for the period for which they are nominated, all the rights of members of the Council.[4] The object of this provision is to secure the services of experts in connection with legislation.

[1] The Pargana of Manpur (Central India) was constituted a Chief Commissionership under Section 59 of the Act. *Vide* notification No. 310-I, dated June 11, 1924, in the *Gazette of India*, 1924, pt. 1, p. 483.

[2] A Legislative Council with very limited powers was set up in Coorg in January, 1924. It consists of 15 elected members and 5 nominated members. *The Indian Year Book*, 1927.

[3] Section 72A of the Act. [4] *Ibid.*

Let us now consider the strength and composition of the existing Legislative Councils in the major provinces.

THE MADRAS LEGISLATIVE COUNCIL

It[1] consists of the members of the Executive Council *ex-officio*, ninety-eight elected members, and such number of members nominated by the Governor as, with the addition of the members of the Executive Council, amount to thirty-four. Of the members so nominated not more than nineteen may be officials, and one is to represent the inhabitants of backward tracts and ten to represent the following communities, namely, the Paraiyans, Pallans, Vallubans, Malas, Madigas, Chakkiliyans, Tottiyans, Cherumans and Holeyas. The Governor may at his discretion make regulations providing for the selection of these eleven members by the communities concerned.[2]

THE BOMBAY LEGISLATIVE COUNCIL

It[3] consists of the members of the Executive Council *ex-officio*, eighty-six elected members and such number of members nominated by the Governor as, with the addition of the members of the Executive Council, amount to twenty-eight. Of the members so nominated, not more than sixteen may be officials, and eight must be persons nominated to represent the following classes or interests as shown below:—

(i)	The Anglo-Indian community	1
(ii)	The Indian Christian community ...	1
(iii)	The labouring classes	3
(iv)	Classes which, in the opinion of the Governor, are depressed classes	2
(v)	The cotton trade	1

[1] Madras Electoral Rule 3. [2] *Ibid.*
[3] Bombay Electoral Rule 3.

THE BENGAL LEGISLATIVE COUNCIL

It[1] consists of the members of the Executive Council *ex-officio*, one hundred and fourteen elected members, and such number of members nominated by the Governor as, with the addition of the members of the Executive Council, amount to twenty-six. Of the members so nominated not more than eighteen[2] may be officials and not less than six must be non-officials, and two are to be persons nominated to represent respectively the following classes or interests, namely, (i) the Indian Christian community, and (ii) classes which, in the opinion of the Governor, are depressed classes, and two must be persons nominated to represent the labouring classes.

THE UNITED PROVINCES LEGISLATIVE COUNCIL

It [3] consists of the members of the Executive Council *ex-officio*, one hundred elected members, and such number of members nominated by the Governor as, with the addition of the members of the Executive Council, amount to twenty-three. Of the members so nominated not more than sixteen may be officials and three must be persons nominated to represent respectively the following classes or interests, namely, (i) the Anglo-Indian community, (ii) the Indian Christian community, and (iii) classes which, in the opinion of the Governor, are depressed classes.

THE PUNJAB LEGISLATIVE COUNCIL

It [4] consists of the members of the Executive Council *ex-officio*, seventy-one elected members, and such number of members nominated by the Governor as, with the addition of the members of the Executive Council, amount to twenty-three. Of the members so nominated not more

[1] Bengal Electoral Rule 3. [2] *Ibid.*
[3] The United Provinces Electoral Rule 3.
[4] The Punjab Electoral Rule 3.

than fourteen may be officials, and five are to be persons nominated to represent the classes mentioned below according to the following distribution, namely :—

(1) the European and Anglo-Indian communities ... 2
(2) the Indian Christian community 1
(3) the Punjabi officers and soldiers of His Majesty's Indian Forces 1
(4) the labouring classes 1

THE BIHAR AND ORISSA LEGISLATIVE COUNCIL

It [1] consists of the members of the Executive Council *ex-officio*, seventy-six elected members, and such number of members nominated by the Governor as, with the addition of the members of the Executive Council, amount to twenty-seven. Of the members so nominated not more than eighteen may be officials and nine must be persons nominated to represent the classes or interests hereinafter mentioned according to the following distribution, namely:—

(1) aborigines 2
(2) classes which are, in the opinion of the Governor, depressed classes 2
(3) industrial interests other than planting and mining 1
(4) the Bengali community domiciled in the province 1
(5) the Anglo-Indian community 1
(6) the Indian Christian community 1
(7) the labouring classes 1

THE CENTRAL PROVINCES LEGISLATIVE COUNCIL

It [2] consists of the members of the Executive Council *ex-officio*, thirty-eight [3] elected members and such number

[1] Bihar and Orissa Electoral Rule 3.
[2] The Central Provinces Electoral Rule 3.
[3] Including one member for the Nagpur University constituency.

of members nominated by the Governor as, with the addition of the members of the Executive Council, amount to thirty-five. Of the members thus nominated not more than eight may be officials, and seventeen must be persons nominated[1] as the result of elections held in Berar, and seven must be persons nominated to represent the classes mentioned below according to the following distribution, namely :—

(1) urban factory labourers 1
(2) the inhabitants of Zamindari and Jagirdari estates excluded from the area of any constituency ... 1
(3) the European and Anglo-Indian communities ... 1
(4) classes which, in the opinion of the Governor, are depressed classes 4

We are to note in this connexion that under proviso (c) to Section 72A (2) of the Act, members nominated to the Legislative Council of the Central Provinces by the Governor as the result of elections held in the Assigned Districts of Berar will be deemed to be elected members of the Legislative Council of the Central Provinces. This provision meets the requirements of Section 72A (2) of the Act which declares that at least seventy per cent. of the members of the provincial Legislative Council must be elected.

THE ASSAM LEGISLATIVE COUNCIL

It[2] consists of the members of the Executive Council *ex-officio*, thirty-nine elected members and such number of members nominated by the Governor as, with the addition of the members of the Executive Council, amount to fourteen. Of the members so nominated not more than

[1] Though actually elected, technically nominated.
These seventeen members are first elected by the seventeen Legislative Council constituencies in Berar and are thereafter nominated by the Governor of the Central Provinces to his Legislative Council.—*The Berar Electoral Rules*.

[2] Assam Electoral Rule 3.

seven may be officials and two must be non-official persons nominated to represent respectively the following classes, namely:—

(1) the labouring classes; and
(2) the inhabitants of backward tracts.

The Governor may at his discretion make regulations providing for the selection of these two members by the communities concerned.

THE BURMA LEGISLATIVE COUNCIL

It[1] consists of the members of the Executive Council *ex-officio*, seventy-nine elected members and such number of members nominated by the Governor as, with the addition of the members of the Executive Council, amount to twenty-four. Of the members so nominated, not more than fourteen may be officials and two must be persons nominated to represent the following classes or interests, namely:—

(1) Indian Commerce; and
(2) the labouring classes.

The distribution of the elected members in the different Legislative Councils is as shown in the table[2] on the next page.

[1] Burma Electoral Rule 3.

[2] *Vide* the Electoral Rules of the different provinces, as corrected up to September 1, 1926.

It may be stated in connexion with this table that 'Commerce and Industry' is divided in the Punjab into two constituencies—one 'Commerce', and the other 'Industry'.

Provinces		Non-Muhammadan	Muhammadan	Sikh	Indian Christian	European	Anglo-Indian	Landholders	University	Planting	Commerce and Industry	Mining	General	India urban	Karen rural	Total
Madras	...	65[1]	13	...	5	1	1	6	1	1	5	...	...	...	...	98
Bombay	...	46[2]	27	...	...	2	...	3	1	...	7	...	...	...	...	86
Bengal	...	46	39	...	...	5	1	5	2	...	15	...	...	...	...	114
United Provinces	...	60	29	...	...	1	...	6	1	...	3	..	...	...	...	100
Punjab	...	20	32	12	...	...	...	4	1	...	2	...	...	...	...	71
Bihar and Orissa	...	48	18	...	...	1	...	5	1	1	...	2	...	...	...	76
Central Provinces[3]	...	29	4	...	...	...	...	2	1	...	1	1	...	...	...	38
Assam	...	20	12	...	...	...	...	...	...	5	1	...	1[4]	...	...	39
Burma	...	...	...	...	...	1	1	...	1	...	5	...	58	8	5	79

[1] Out of sixty-five seats allotted to non-Muhammadans, twenty-eight seats are reserved for non-Brahmans; 'provided that, if the number of non-Brahman candidates at the date of the election is less than the number of reserved seats, the number of reserved seats shall be reduced to the extent of that deficiency.'—Madras Electoral Rule 4, Schedule I.

[2] Seven out of forty-six seats are reserved for the Mahrattas: but no seat is to be deemed to be a reserved seat for the purposes of any election . . . if the constituency concerned is already represented by a Mahratta member or if there is no Mahratta candidate.

[3] If the seventeen members from Berar who—though they are nominated after their election—are to be deemed as elected members under Section 72A of the Act, are included in our calculation, the corresponding numbers in the case of the Central Provinces will be: non-Muhammadan, 41; Muhammadan, 7; Landholders, 3; University, 1; Commerce and Industry, 2; and Mining, 1: Total, 55.

[4] 'This seat (Shillong) is filled by a general electorate including Muhammadans, there being no separate Muhammadan urban constituency.'—*India in 1920*, p. 249.

Representation of special classes and interests.

The foregoing table shows that communal representation has been given to the Sikhs in the Punjab, to the Indian Christians in Madras, to the Anglo-Indians in three, to the Europeans in six and to the Muhammadans in eight provinces.[1] Besides, the planting, mining, commercial, industrial and land-owning interests have been granted special representation so that their peculiar rights and privileges may be protected.

Duration.

The normal duration[2] of every Governor's Legislative Council is three years; but it can be earlier dissolved by the Governor who can also prolong its life for a further period not exceeding one year if he so think fit in special circumstances. Within six months, or within nine months with the sanction of the Secretary of State, of the dissolution of a Legislative Council, the Governor is required by the law to appoint a date for the next session of the Council. He appoints times and places for holding the sessions of his Legislative Council and he can prorogue the Council by notification or otherwise.[3]

The President of the Legislative Council.

The President of a Governor's Legislative Council had,[4] till the expiration [5] of four years from its first meeting, to be appointed[6] by the Governor, but since then has been, and is now, elected, subject to the approval of the Governor, by the Council

[1] Including Berar along with the Central Provinces.
[2] Section 72B (1) of the Act.
[3] Section 72B (2) of the Act.
[4] Section 72C (1) of the Act.
[5] 'Provided that, if at the expiration of such period of four years the Council is in session, the President then in office shall continue in office until the end of the current session, and the first election of a President shall take place at the commencement of the next ensuing session.'—Proviso to Section 72C (1) of the Act.
[6] We may note here the observations of the Parliamentary Joint

from among its members. The procedure of his election is exactly the same [1] *mutatis mutandis* as that of the election of the President of the Legislative Assembly. There is also a Deputy President of the Council, who is, and has all along been, elected by the Council from among its members subject to the approval of the Governor. The method of his election varies slightly from province to province. Generally it is as follows.[2] After the members have been sworn in at the beginning of each new Council, the Council elects one of its members to be its Deputy President. Every member who wishes to propose another member for election as Deputy President, ascertains previously that the latter is willing to serve if elected, and hands to the President [3] of the Council 'a notice, containing the name of the member he desires to propose, signed by himself and by some other member as seconder'. If only one member is proposed for election, the President reads out his name together with the names of his proposer and seconder, and declares him to be

Select Committee on the question of the Presidency of the Legislative Council :

'The Committee have considered carefully the question who is to preside over the Legislative Councils in the provinces. They are of opinion that the Governor should not preside, and they advise that, for a period of four years, the President should be appointed by the Governor. Wherever possible it would be a great advantage if some one could be found for this purpose who had parliamentary experience. The Legislative Council should itself elect a Vice-President, and at the end of four years the nominated President would disappear, and the President and the Vice-President would be elected by the Councils. The Committee attribute the greatest importance to this question of the Presidency of the Legislative Council. It will, in their opinion, conduce very greatly to the successful working of the new Councils if they are imbued from the commencement with the spirit and conventions of parliamentary procedure as developed in the Imperial Parliament.'—The Report from the Joint Select Committee, on Clause 9 of the Government of India Bill.

[1] See Rule 5A of the Provincial Legislative Rules and also pages 25-27 *ante*.

[2] See the relevant Standing Orders of the Bengal, Madras, Bombay and the United Provinces Legislative Councils.

[3] To the Secretary in the case of the Bombay Legislative Council.

duly elected. If more than one person are proposed, the President reads out their names together with those of their proposers and seconders, and the Council then votes on the question by ballot, and the President declares the person who receives the majority of votes to be duly elected. The ballot is held in most[1] cases in such manner as the President directs. No member can vote for more than one candidate. If a vacancy in the office of Deputy President occurs during the continuance of a Council, or if the Governor withholds his assent from the election of a particular member, a fresh election must be held in accordance with the procedure stated above; but it is provided that a member whose election has not been ratified by the Governor must not be proposed again as a candidate during the life of that Council.

Chairmen.

As we have seen in the case of the Legislative Assembly, the President of a Governor's Legislative Council also nominates, at the beginning of every session, from among the members of the Council a panel of not more than four Chairmen, any one of whom may preside over the Council in the absence of the President and the Deputy President, when so requested by the President or, in his absence, by the Deputy President.[2] Besides, if at any time the office of President is vacant and there is no person authorized and competent to preside over the Council, the Governor appoints[3] from among its members a Chairman to preside until a President is duly elected and

[1] In the case of the Bombay Legislative Council the manner of holding the ballot has been prescribed in the Standing Order relating to the election of the Deputy President. See *Rules and Standing Orders of the Bombay Legislative Council*, 1926, p. 12. See pages 311–312 of *The Bengal Legislative Council Manual*, 1927, for the manner in which the ballot for the election of the Deputy President is held in the Bengal Legislative Council.

[2] Rule 3 (1) of the Legislative Council Rules.

[3] Rule 3 (2) of the Legislative Council Rules.

the approval of the Governor to his election is announced to the Council. The Deputy President and any Chairman of the Council have,[1] when presiding over the Council, the ame powers as the President.

The appointed President might resign his office to the Governor, and might also be removed from office by the Governor.[2] An elected President and a Deputy President must cease to hold office as soon as they cease to be members of the Council. They too may resign office to the Governor, and may be removed from office by a vote of the Council with the concurrence of the Governor.[3]

Terms of office of the President and the Deputy President.

It was provided in the Act that the President and the Deputy President would receive[4] such salaries as would be determined, in the case of an appointed President,[5] by the Governor, and in the case of an elected President[6] or Deputy President,[7] by Act of the local Legislature.

[1] Rule 4 of the Legislative Council Rules.

[2] Section 72 C of the Act.

[3] *Ibid.* [4] *Ibid.*

[5] The salaries of the appointed Presidents of the different Legislative Councils varied ordinarily from Rs. 12,000 to Rs. 48,000 a year. The office of President of the Bihar and Orissa Legislative Council was once held (August, 1922) by a member of the local Executive Council. The appointed Presidents of the Bengal, Bombay and Madras Legislative Councils received each a salary of Rs. 36,000 a year. —*Vide* Earl Winterton's statement on the subject in the House of Commons in the *Englishman* (dak edition) of August 2, 1922.

[6] The salaries of the elected Presidents of the Bengal, Bombay, Madras, Assam, and the Punjab Legislative Councils have been fixed at Rs. 3,000, Rs. 3,000, Rs. 2,000, Rs. 500 and Rs. 3,000 a month respectively. The Presidents are whole-time officers.—*Vide* Proceedings, Bengal Legislative Council, February 18, 1925; also Proceedings, Legislative Assembly, February 11, 1925; and also *The Madras Legislative Council Manual*, 1926, p. 8.

[7] The salaries of the Deputy Presidents of the Madras, Bombay, ngal, United Provinces, Punjab, Bihar and Orissa, Central Pronces, and Assam have been fixed at Rs. 5,000, Rs. 1,500, Rs. 5,000, Rs. 5,000, Rs. 5,000, Rs. 3,000, Rs. 3,000, and Rs. 2,500 a year respecvely.—*Vide* Earl Winterton's statement on the subject in the House of Commons, in the *Englishman* of August 2, 1922.

The Secretary of a Governor's Legislative Council and his assistants are appointed by the Governor and hold office during his pleasure.[1]

The powers and duties of the President of a Governor's Legislative Council are the same as those[2] of the President of the Legislative Assembly. We therefore do not propose to deal with them separately here.

A NOTE ON THE DESIRABILITY OF A SECOND CHAMBER IN A GOVERNOR'S PROVINCE.

Considering the question on its merits alone, we are not in favour of the creation of a second chamber in a Governor's province. Our reason is that the legislative competence of a provincial legislature is limited and it would therefore be an avoidable luxury and an unnecessary complication of the legislative machinery to have a second chamber in the provincial legislature. We should suggest, however, that if it is decided to continue the existing unicameral system in the provinces, a certain proportion, say 10 *per cent*, of the seats in the provincial legislatures should be filled by the nomination of non-officials by The Head of the local Executive. This arrangement will enable the latter to nominate to a provincial legislature some, at least, of those persons whose presence in the legislature will be of undoubted advantage to it, but who may not have, for one reason or another, chosen to enter into an electoral contest at the previous election or who may have been defeated in such a contest as a result of the activities of a hostile combination temporarily formed against them. We do not think our suggestion, if carried out, would materially affect the democratic character of the provincial legislature.

[1] Rule 5 of the Legislative Council Rules.
[2] See pages 30-36 *ante*; also Chapter XV.

CHAPTER V

QUALIFICATIONS OF ELECTED AND NOMINATED MEMBERS

General qualifications for election or nomination to the different legislative bodies—Special qualifications required for election to those bodies in case of certain constituencies—General and special constituencies.

For membership of either Chamber of the Indian Legislature or of a Governor's Legislative Council, there are certain general qualifications common to them all and a few special qualifications peculiar to each legislative body. For instance, a candidate to be eligible for election as a member of the Council of State must not only possess the common qualifications, but must satisfy the special conditions requisite for election to the Council of State either from a 'general' constituency or from a 'special' constituency in any province, as the case may be.

GENERAL QUALIFICATIONS[1]

A person is not eligible for election or nomination to either Chamber of the Indian Legislature or to a Governor's Legislative Council, if such person is not a British subject; or is a female; or has, in the case of election or nomination to a Governor's Legislative Council, already been sworn in as a member of any legislative body constituted under the Government of India Act and, in the

[1] See Rules 5 and 22 of the provincial, Legislative Assembly, and the Council of State Electoral Rules, and also Rule 4 of the Berar Electoral Rules—all as corrected up to September 1, 1926.

These Electoral Rules have been made by the Governor-General in Council under Sections 64, 72A and 129A of the Government of India Act, with the sanction of the Secretary of State in Council.

case of election or nomination to either Chamber of the Indian Legislature, is already a member of the Chamber and 'has made the oath or affirmation as such member'; or having been a legal practitioner has been dismissed or is under suspension from practising as such by order of any competent court; or has been declared by a competent court to be of unsound mind; or is under twenty-five years of age; or is an undischarged insolvent; or being a discharged insolvent has not obtained from the court a certificate that his insolvency was caused by misfortune without any misconduct on his part.

It is provided, however, that, in the case of a provincial Legislative Council, the Local Government may remove, subject to such conditions as it may prescribe, the disqualification arising from not being a British subject, so far as the Ruler of any State in India or a subject of any such State[1] is concerned. And if the Ruler of any State in India or any subject of such a State is eligible for election or nomination to the Legislative Council of a province, such Ruler or subject will not, by reason only of not being a British subject, be ineligible for election or nomination[2] to the Council of State or the Legislative Assembly, as the case may be.[3]

It is also provided that if a resolution is passed by a Legislative Council 'after not less than a month's notice has been given of an intention to move such a resolution, recommending that the sex disqualification for election to

[1] Or any class of such subjects.

[2] To represent that province.

[3] It is also laid down that no subject of such a State will for that reason be ineligible for election to the Legislative Assembly by the Delhi constituency or for nomination to it to represent the province of Delhi; and that no subject of a State in Rajputana will for that reason be ineligible for election to the Assembly by the Ajmer-Merwara constituency or for nomination to it to represent the province of Ajmer-Merwara.—Legislative Assembly Electoral Rules 5(1) and 22(1).

the Council should be removed either in respect of women generally or any class of women ', the Local Government must[1] make regulations providing that women, or a class of women, as the case may be, will not be disqualified for election or nomination to the Council by reason only of their sex.[2] And if a similar resolution is passed in the like manner by the Legislative Assembly either in respect of women generally, or any class of women, the Governor-General in Council is required to make regulations providing that women, or a class of women, as the case may be, will not be disqualified, by reason only of their sex,—

(i) for election to the Assembly—

(*a*) by the Delhi constituency or the Ajmer-Merwara constituency, or

(*b*) by any other constituency if they are not so disqualified for election to the Legislative Council of their province ; and

(ii) for nomination to the Assembly.

In the same way (and subject to the similar[3] condition in the case of election only) the sex-disqualification for

[1] But in the case of election (only) to the Burma Legislative Council, the Local Government *may*, and is not bound to, remove the sex disqualification by an order in this behalf.—Burma Electoral Rule 5(1).

[2] *Vide* Electoral Rules 5(1) and 22(1) ; also Berar Electoral Rule 4(1).

The sex disqualification for election or nomination has so far been removed in Madras, Bombay, and the Punjab. Madras was the first province to admit its women to the membership of its legislature. Under the 'Madras Electoral Sex Disqualification (Candidature) Removal Regulation ', 'no woman shall be disqualified by reason only of her sex for election or nomination as a member of the Legislative Council of Madras.'—(*The Madras Legislative Council Manual, 1926*, vol. i, p. 151 n). The first Indian lady to be a member of a legislature in British India is Dr. Muthalakshmi Ammal who has been nominated to the (third) Madras Legislative Council. She has also been elected to the office of Deputy President of the Council.

Another lady, Dr. Mrs. Shave, a non-official, has been nominated (Nov., 1928) a member of the Punjab Legislative Council.

[3] I.e. eligibility for election to the provincial Legislative Council.

election or nomination to the Council of State may also be removed.

Further, the disqualification arising from being a dismissed or suspended legal practitioner may be removed by an order of the Governor-General in Council or of a Local Government, as the case may be.

'A person against whom a conviction by a criminal court involving a sentence of transportation or imprisonment for a period of more than one year is subsisting', is, unless the offence of which he was convicted has been pardoned, ineligible for election or nomination for five years from the date of the expiration of the sentence.[1] But if a person thus disqualified makes an application[2] asking for the removal of the disqualification, the disqualification may be removed by order in this behalf—

(i) by the local Government with the previous approval of the Governor-General in Council, so far as—

(*a*) election or nomination to the local Legislative Council, or

(*b*) election to either Chamber of the Indian Legislature from the particular province, or

[1] Electoral Rules 5(2) and 22(2); also Berar Electoral Rule 4(2).

[2] 'A sentence of more than one year's imprisonment', says an official notification, 'must now have been imposed before there is any disqualification, and further it is open to the Local Government, with the approval of the Governor-General in Council, on consideration of the circumstances of any individual case, to remove the disqualification. The rules require an application by the person disqualified, but any person, who desires to stand for election for any of the Local Councils or for either Chamber of the Indian Legislature, has only to address the Local Government, and in a written application give particulars of the sentence which constitutes a disqualification in his case and say that he wishes to stand for election and ask that the disqualification may be removed. The Local Government will then be in a position to consider the circumstances of the conviction in his case by the amendments which have been made.'—See the ***Englishman*** (dak edition) of October 26, 1925; also the Government of India (Home Department) notifications of July 23 and October 24, 1925, on the subject.

(c) nomination to either Chamber of the Indian Legislature as the result of an election held in Berar,

is concerned; and

(ii) by the Governor-General in Council, so far as nomination to either Chamber of the Indian Legislature otherwise than as the result of an election held in Berar, is concerned.

Previously to July, 1925, any conviction by a criminal court which involved a sentence of more than six months would, unless the offence had been pardoned, constitute a disqualification for both election and nomination for a period of five years from the date of the expiration of the sentence. The relevant Electoral Rule has since been amended as shown above, on the recommendation[1] of the Reforms Enquiry Committee, 1924, of which the late Sir Alexander Muddiman was the Chairman. The Committee was of opinion that the period of six months was too short, and that it should be increased to one year.[2] It further held that the disqualification following from a conviction by a criminal court 'should be modified by enabling it to be removed, subject to provisions to secure uniformity,

[1] See para 72 of the Majority Report of the Committee; also its twelfth recommendation.

[2] The following may be noted in this connexion:—

'No person shall be capable of being chosen or of sitting as a Senator or as a member of the House of Assembly who has been at any time convicted of any crime or offence for which he shall have been sentenced to imprisonment without the option of a fine for a term of *not less than twelve months*, unless he shall have received a grant of amnesty or a free pardon, or unless such imprisonment shall have expired at least five years before the date of his election'.—South Africa Act, 1909, Section 53(*a*).

'Any person who is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment *for one year or longer*, shall be incapable of being chosen or of sitting as a Senator or member of the House of Representatives'.—The Commonwealth of Australia Constitution Act, 1900, Section 44 (ii).

by orders of the Local Government instead of only by pardon.'

Persons convicted of an offence[1] under Chapter IXA of the Indian Penal Code punishable with imprisonment for more than six months or reported by Election Commissioners as guilty of a corrupt practice[2] as specified in Part I, or in paragraphs 1, 2 or 3 of Part II, of Schedule V to Electoral Rules, are not eligible for either election or nomination to any legislative body for five years from the date of such conviction or of the finding of the Commissioners, as the case may be ; and a person reported by such Commissioners to be guilty of any other corrupt practice is similarly disqualified for three years from such date.[3]

'If, in respect of an election to any legislative body constituted under the Government of India Act, a return of the election expenses of any person who has been nominated as a candidate at that election', is not submitted within a certain time[4] and in a prescribed manner, or if any such return is submitted which is found either by Election Commissioners or by a Magistrate in a judicial proceeding, to be false in any material respect, neither the candidate nor his election agent is eligible for election or nomination for five years from the date of such election.[5]

It is provided, however, that the disqualifications mentioned in the last two paragraphs may be removed by an order of the Governor-General in Council or of the Local Government, as the case may be.

It may be noted in this connexion that an official is not

[1] These offences and corrupt practices refer to bribery, undue influence, false personation, unauthorized expenditure, etc., in connexion with elections. They will be discussed later on.

[2] *Ibid.*

[3] See Electoral Rules 5 (3) and 22 (3) ; also the Berar Electoral Rules.

[4] Within 35 days from the date of the publication of the result of the election.—Electoral Rule 19(1).

[5] See Electoral Rules 5 (4) and 22 (4) ; also the Berar Electoral Rules.

qualified for election as a member of either Chamber of the Indian Legislature or of a local Legislative Council. And if any non-official member of either Chamber of the Indian Legislature or of a local Legislative Council, whether elected or nominated, accepts any office in the service of the Crown in India, his seat in that Chamber or on the Council, as the case may be, will become vacant.[1] But a Minister is not to be deemed an official and a person is not to be deemed to accept office on appointment as a Minister.[2]

SPECIAL QUALIFICATIONS

We shall now deal with the special qualifications necessary for election to the different legislative bodies. These qualifications will *mutatis mutandis* also apply to women, if and where they are eligible for election.

THE COUNCIL OF STATE[3]

1. No person is eligible for election as a member of the Council of State to represent a general constituency—

(*a*) in the United Provinces or in Assam, unless his name is on the electoral roll of a general constituency in the same province ;[4]

(*b*) in Madras, Bombay, Bengal, the Punjab or Bihar and Orissa, unless his name is on the electoral roll of the constituency or of another constituency in the same province and 'of the same communal description as that by which he desires to be elected' ; and

[1] Sections 63 E(1) and 80 B of the Act.
For the definition of the term 'official' in this connexion, see App. H.

[2] Proviso to Sec. 80 B of the Act.

[3] The Council of State Electoral Rule 6 ; and Berar Electoral Rule 5(1).

[4] It appears from this that in the United Provinces and Assam a non-Muhammadan is eligible for election to the Council of State to represent a Muhammadan constituency, and *vice versa*.

(*c*) in the Central Provinces or in Burma, unless his name is on the electoral roll of the constituency.[1]

2. No person is eligible for election as a member of the Council of State to represent a special constituency unless his name is on the electoral roll of the constituency.

'Special constituency' here means a European Commerce constituency.

'General constituency' means a General constituency in the case of the Central Provinces and Burma,[2] or a non-Muhammadan, Muhammadan, or Sikh constituency, as the case may be, in the case of the other provinces.

THE LEGISLATIVE ASSEMBLY[3]

1. No person is eligible for election as a member of the Legislative Assembly to represent a general constituency other than a European constituency or a constituency in the province of Burma or the Delhi constituency or the Ajmer-Merwara constituency, unless his name is on the electoral roll of the constituency or 'of a constituency situate in the same province and prescribed for elections to the provincial Council by Rules under section 72(A) of the Act'; and unless he happens to be a non-Muhammadan, Muhammadan or Sikh in the case of a non-Muhammadan, Muhammadan or Sikh constituency respectively in the province of Madras, Bombay, Bengal, the Punjab, Bihar and Orissa or the Central Provinces.[4]

[1] This qualification also applies to the election (for nomination) to the Council of State by the Council of State constituency in Berar.

[2] Or the Council of State constituency in Berar.

[3] L. A. E. R. 6. Also Berar Electoral Rule 5(2).

[4] It is clear from this that in the United Provinces and Assam a non-Muhammadan is eligible for election to the Legislative Assembly to represent a Muhammadan constituency, and *vice versa*. But neither a Muhammadan nor a non-Muhammadan is so eligible to represent a European constituency.

It may also be stated here that no person can represent the Legislative Assembly constituency in Berar, unless his name is on the

2. No person is qualified for election as a member of the Legislative Assembly to represent a special constituency or a constituency in the province of Burma or Delhi or Ajmer-Merwara unless he is registered as an elector of the constituency.

3. No person is eligible for election as a member of the Legislative Assembly to represent a European constituency, unless he is himself a European and his name is on the electoral roll of the constituency or of any other European constituency authorized to send a representative (or representatives) to the Assembly.

'General constituency' here means a non-Muhammadan, Muhammadan, European, non-European, or Sikh constituency or the Delhi or the Ajmer-Merwara constituency.

'Special constituency' means a Landholders' or Indian Commerce constituency.

THE MADRAS LEGISLATIVE COUNCIL[1]

1. No person is eligible for election as a member of the Council to represent a general constituency unless his name is on the electoral roll of the constituency or of any other constituency in the province; and unless he is himself a non-Muhammadan, Muhammadan, Indian Christian, European or Anglo-Indian in the case of a non-Muhammadan, Muhammadan, Indian Christian, European or Anglo-Indian constituency respectively.

2. No person is eligible for election as a member of the Council to represent a special constituency unless he is registered as an elector of the constituency.

'General constituency' here means a non-Muhammadan, Muhammadan, Indian Christian, European, or Anglo-Indian constituency.

electoral roll of the constituency or of a constituency of the Central Provinces Legislative Council or if he is a Muhammadan.

[1] The Madras Legislative Council Electoral Rule 6.

'Special constituency' means a Landholders', University, Planters', or Commerce and Industry constituency.

THE BOMBAY LEGISLATIVE COUNCIL [1]

1. A person to be eligible for election as a member of the Council to represent a general constituency—

(*a*) must have his name registered on the electoral roll of the constituency or of any other constituency in the province ;

(*b*) must have, 'for the period of six months immediately preceding the last date fixed for the nomination of candidates in the constituency, resided in the constituency or in a division any part of which is included in the constituency'; and

(*c*) must be himself a non-Muhammadan, Muhammadan or European in the case of a non-Muhammadan, Muhammadan or European constituency respectively:

Provided that '(i) for the purposes of clause (*b*) the City of Bombay shall be deemed to be a division, and (ii) nothing in clause (*b*) shall be deemed to render ineligible for election any person who has held office as a Minister, within the period of six months referred to in that clause, and (iii) the provisions of clause (*b*) shall not apply to candidates for European constituencies.'

2. No person is eligible for election as a member of the Council to represent a special constituency unless he is registered as an elector of the constituency.

'General constituency' here means a non-Muhammadan, Muhammadan, or European constituency.

'Special constituency' means a Landholders', University, or Commerce and Industry constituency.

[1] The Bombay Legislative Council Electoral Rule 6.

THE BENGAL LEGISLATIVE COUNCIL[1]

1. A person to be eligible for election as a member of the Council to represent a general constituency must have his name registered on the electoral roll of the constituency or of any other constituency in the province and must, in the case of a non-Muhammadan, Muhammadan, European or Anglo-Indian constituency, be himself a non-Muhammadan, Muhammadan, European or Anglo-Indian, as the case may be.

2. No person is eligible for election as a member of the Council to represent a special constituency unless his name is on the electoral roll of the constituency.

'General constituency' here means a non-Muhammadan, Muhammadan, European, or Anglo-Indian constituency.

'Special constituency' means a Landholders', University, or Commerce and Industry constituency.

THE UNITED PROVINCES LEGISLATIVE COUNCIL[2]

No person is eligible for election as a member of the Council to represent a general constituency other than the European constituency, unless he is registered as an elector of the constituency or of any other constituency in the province other than the European constituency.[3]

2. To be eligible for election as a member of the Council to represent a special constituency or the European constituency, a person must have his name registered on the electoral roll of the constituency.

'General constituency' here means a non-Muhammadan, Muhammadan, or European constituency.

[1] The Bengal Legislative Council Electoral Rule 6.

[2] The United Provinces Legislative Council Electoral Rule 6.

[3] Thus in the United Provinces a Muhammadan can represent a non-Muhammadan constituency in the Local Legislative Council, and *vice versa*.

'Special constituency' means a Talukdars', Agra Landholders', University, or Commerce and Industry constituency.

THE PUNJAB LEGISLATIVE COUNCIL[1]

1. No person is eligible for election as a member of the Council to represent a general constituency, unless he is registered as an elector of the constituency or of any other constituency in the province and unless he is himself a non-Muhammadan, Muhammadan or Sikh in the case of a non-Muhammadan, Muhammadan or Sikh constituency respectively.

2. No person is eligible for election as a member of the Council to represent a special constituency, unless he is registered as an elector of the constituency.

'General constituency' here means a non-Muhammadan, Muhammadan, or Sikh constituency.

'Special constituency' means a Landholders', University, Commerce, or Industry constituency.

THE BIHAR AND ORISSA LEGISLATIVE COUNCIL[2]

1. No person is eligible for election as a member of the Council to represent a general constituency, unless his name is registered on the electoral roll of the constituency or of any other constituency in the province and unless he is himself a non-Muhammadan, Muhammadan, or European in the case of a non-Muhammadan, Muhammadan, or European constituency respectively.

2. No person is eligible for election as a member of the Council to represent a special constituency unless he is registered as an elector of the constituency.

[1] The Punjab Legislative Council Electoral Rule 6.
[2] The Bihar and Orissa Legislative Council Electoral Rule 6.

'General constituency', here means a non-Muhammadan, Muhammadan, or European constituency.

'Special constituency' means a Landholders', University, Planting, or Mining constituency.

THE CENTRAL PROVINCES LEGISLATIVE COUNCIL[1]

1. A person to be eligible for election as a member of the Council to represent a general constituency—

(*a*) must have his name registered on the electoral roll of the constituency or of any other constituency[2] in the province;

(*b*) must possess 'a place of residence[3] in a district, any part of which is included in the constituency or, in the case of an urban constituency, in any such district or within two miles of the boundary of the constituency'; and

(*c*) must be a non-Muhammadan or Muhammadan in the case of a non-Muhammadan or a Muhammadan constituency respectively.

2. No person is eligible for election as a member of the Council to represent a special constituency unless he is registered as an elector of the constituency.

'General constituency' here means a non-Muhammadan or Muhammadan constituency.

'Special constituency'[4] means a Landholders', University, Mining, or Commerce and Industry constituency.

[1] C. P. L. C. E. R. 6. See also the Berar Electoral Rule 5(3).

[2] Or of another constituency of the Legislative Council in the case of Berar.

[3] In this connexion a person is to be deemed to have a place of residence, if he has actually dwelt in a house or part of a house. . . . . . for an aggregate period of not less than 180 days during the calendar year preceding that in which the electoral roll for the time being under preparation is first published, or has maintained for the same period a house, or part of a house, as a dwelling for himself . . . . and has visited the same during that year.

[4] In the case of Berar, 'Special constituency' means the Landholders' or the Commerce and Industry constituency.

THE ASSAM LEGISLATIVE COUNCIL[1]

A person is not eligible for election as a member of the Council to represent—

(1) the Shillong constituency or a non-Muhammadan or Muhammadan rural constituency,[2] unless his name is registered on the electoral roll of the constituency or of another constituency in the province ; or

(2) a Planting, or Commerce and Industry constituency,[3] unless his name is registered as an elector of the constituency.

THE BURMA LEGISLATIVE COUNCIL[4]

No person is eligible for election as a member of the Council to represent a general constituency, unless he is registered as an elector of a constituency in the province, and unless he happens to be a Karen, an Indian, an European or an Anglo-Indian in the case of a Karen, Indian, European or Anglo-Indian constituency respectively.

No person is eligible for election as a member of the Council to represent a special constituency unless his name is on the electoral roll of the constituency.

'General constituency' here means a General Urban, General Rural, Indian Urban, Karen Rural, Anglo-Indian or European constituency.

'Special constituency' means a University or Commerce constituency.

[1] The Assam Legislative Council Electoral Rule 6.

[2] These constituencies are referred to in the Assam Electoral Rules as 'general constituencies.'

Thus in Assam, as in the case of the United Provinces, a Muhammadan can represent a non-Muhammadan constituency in the local Legislative Council, and *vice versa*.

[3] These constituencies are referred to in the Assam Electoral Rules as 'Special constituencies'.

[4] Burma Legislative Council Electoral Rule 6.

CHAPTER VI

THE ELECTORAL ROLL[1]

General conditions of registration as an elector—Basis of franchise in a general constituency: In the case of the Council of State—In the case of the Legislative Assembly—In the case of the Provincial Legislative Councils—The preparation of the electoral roll—The amendment of an electoral roll—Electoral Regulations.

A person is entitled to be registered on the electoral roll of a constituency, if such person has the qualifications required of an elector of that constituency and is not subject to any of the following disabilities,[2] namely :—

(1) is not a British subject[3] ; or

(2) is a female[4] ; or

(3) has been declared by a competent court to be of unsound mind ; or

[1] The Electoral Rules (as corrected up to the 1st of September, 1926), Part III.

[2] Electoral Rule 7 ; also Berar Electoral Rule 6.

[3] Or is not a subject of the Hyderabad State also in the case of a constituency in Berar.

[4] There is no disqualification on the ground of sex in Burma where female franchise has been adopted since the introduction of the Reforms there.

In regard to other provinces, we may note the following :

'We are satisfied that the social conditions of India make it premature to extend the franchise to Indian women at this juncture, when so large a proportion of male electors require education in the use of a responsible vote.

Further, until the custom of seclusion of women, followed by many classes and communities, is relaxed, female suffrage would hardly be a reality ; it would be out of harmony with the conservative feeling of the country ; and it would involve great difficulties in the actual recording of votes. . . . At the next revision (as contemplated by the Joint Report) of the constitutions of the Councils the matter should be reconsidered in the light of the

(4) is under twenty-one years of age.[1]

It is provided, however, that[2] a local Government may direct, subject to such conditions as it may prescribe, that the Ruler of any State in India or a subject of any such State will not be disqualified, by reason only of not being a British subject, for registration on the electoral roll of a constituency of the local Legislative Council.[3] And if such a Ruler or such a subject is eligible for registration on the electoral roll of a constituency of the Legislative Council of a province, such Ruler or subject will not, by reason of not being a British subject, be ineligible for registration on the electoral roll of any constituency of either Chamber of the Indian Legislature in that province. Furthermore, no subject of an Indian State is for that reason disqualified for registration on the electoral roll of the Delhi constituency of the Legislative Assembly, and no subject of a State in Rajputana is for that reason disqualified for registration on the electoral roll of the Ajmer-Merwara[1] constituency of the Assembly.

experience gained of the working of the electoral system and of social conditions as they then exist'.—Report by the Franchise Committee, para. 8.

See in this connexion footnote 3 on page 83.

[1] Or is under eighteen years of age in the case of a constituency of the Burma Legislative Council.

[2] Proviso to Electoral Rule 7.

[3] Or of the Council of State constituency or the Legislative Assembly constituency in Berar.

We may notice in this connexion the following notification of the Government of Bengal:—

(1) 'A subject of any State in India shall not be ineligible for election as a member of the Legislative Council of the Governor of Bengal by reason only of his not being a British subject.

(2) A Ruler of any State in India or a subject of any such State, shall not be disqualified for registration on the electoral roll of a constituency for the election of a member of the Legislative Council of the Governor of Bengal by reason only of his not being a British subject.

(3) A subject of any State in India shall not be disqualified for nomination to the Legislative Council of the Governor of Bengal by reason only of his not being a British subject.

It is further provided[1] that the sex disqualification for registration as voters for a provincial Legislative Council must be removed by the local Government concerned, if a resolution is passed to that effect by the local Legislative Council 'after not less than one month's notice has been given of an intention to move such a resolution.' And if a similar resolution is passed in the like manner by either Chamber of the Indian Legislature either in respect of women generally or any class of women, the Governor-General in Council[2] must remove[3] the sex disqualification for registration as electors for the Chamber in respect of those women or that class of women, as the case may be, if they are not ineligible for registration as voters of the Legislative Council of their province on the ground of their sex. Further, the sex disqualification for registration on the electoral roll of the Delhi or the Ajmer-Merwara constituency of the Legislative Assembly must be removed by the Governor-General in Council, if a resolution is passed by the Assembly in the same manner as in the previous cases.

[1] Proviso to Electoral Rule 7.

[2] And the local Government in the case of the constituency of either Chamber in Berar.

[3] So far women have been enfranchised, both for the provincial Legislative Councils and the Legislative Assembly, in Madras, Bombay, the United Provinces, the Punjab, Burma, Assam and Bengal. It need not perhaps be pointed out here that the women have been admitted to the franchise on the same terms as men. The number of women who actually voted in contested constituencies at the third (1926) General Election to provincial Legislative Councils was not large. In Madras only 18·5 per cent. of women voters actually voted in such constituencies; in Bombay, 20·1 per cent.; in the United Provinces, 6·3 per cent.; and in the Punjab, 8·9 per cent. The corresponding percentages in the case of the third (1926) General Election to the Legislative Assembly were 22·1 per cent. (in Madras), 12·2 per cent. (in Bombay), 4·5 per cent. (in the United Provinces) and 12·3 per cent. (in the Punjab). In the second (1926) General Election to the Burma Legislative Council only 9·8 per cent. of women voters actually recorded their votes —Vide *East India (Constitutional Reforms—Elections), Cmd.* 2923 (1927); *The Indian Year Book*, 1927; also *The Bengal Legislative Council Manual*, 1927, p. 165n.

If any person[1] is convicted of an offence under Chapter IX(A) of the Indian Penal Code punishable with imprisonment for a period exceeding six months or is reported by Election Commissioners, specially appointed for the purpose, 'as guilty of a corrupt practice[2] as specified in Part I, or in paragraph 1, 2 or 3 of Part II, of Schedule V' to Electoral Rules, he is disqualified from voting for a period of five years from the date of the conviction or the report by the Commissioners, as the case may be; and if any person is declared guilty by such Commissioners of any other corrupt practice, he is similarly disqualified for a period of three years. But this disqualification against any person may be removed by the Governor-General in Council or by the local Government, as the case may be.

Right to vote.

Every person registered on the electoral roll of a constituency is entitled[3] to vote at an election of a member or members for that constituency. But no person can be registered[4] as an elector in more than one general constituency and, consequently, no person can vote[5] at any general election in more than one general constituency.[6] Nor can a person vote[7] at any election who is subject to any disability mentioned before.[8]

[1] Electoral Rule 7 (2), also Berar Electoral Rule 6 (2).
[2] The offences and corrupt practices, referred to in the sentence, are bribery, undue influence, false personation, etc.
[3] Electoral Rule 10 (1); also Berar Electoral Rule 9 (1).
[4] Electoral Rule 7 (1); also Berar Electoral Rule 6 (1).
[5] Proviso to Electoral Rule 10 (1); also Berar Electoral Rule 9 (1).
[6] Or both in the Calcutta University and in the Dacca University constituency.
[7] Proviso to Electoral Rule 10 (1); alse Berar Electoral Rule 9 (1).
Nor can a person vote at any election if on the date on which the poll is taken he is undergoing a sentence of transportation, penal servitude, or imprisonment.—*Ibid. The Gaz. of India*, April 30th, 1927, Pt. 1, p. 452.
[8] If any person is proved, in the course of the hearing of an election petition, to have voted in violation of the proviso to Electoral Rule 10 (1) (see footnote 7 above), his vote will be void.—Electoral Rule 10 (2). This also applies to elections in Berar.

The qualifications of an elector for a general[1] constituency are based,

(A) in the case of the Council of State,[2] on—

(1) residence, or residence and community, and

(2) (*a*) the holding of land, or

(*b*) assessment to, or payment of, income-tax, or

(*c*) past or present membership of a legislative body, or

(*d*) past or present tenure of office on a local authority, or

(*e*) past or present University distinction, or

(*f*) the tenure of office in a co-operative banking society, or

(*g*) the holding of a title conferred for literary merit;

(B) in the case of the Legislative Assembly,[3] on—

(1) community,[4]

(2) residence, and

(3) (*a*) the ownership or occupation of a building, or

(*b*) assessment to, or payment of, municipal or cantonment rates or taxes or local cesses, or

(*c*) assessment to, or payment of, income-tax, or

(*d*) the holding of land, or

(*e*) membership of a local body; and

(C) in the case of a provincial Legislative Council,[5] generally on—

(1) community,[6]

[1] The qualifications of electors for special constituencies have been stated in Chapters VII-X.

[2] The Council of State Electoral Rule 8 (1).

[3] The Legislative Assembly Electoral Rule 8 (1).

[4] This does not apply to the Delhi constituency or the Ajmer-Merwara constituency.

[5] Provincial Legislative Councils Electoral Rule 8 (1).

[6] Except in the case of the Shillong constituency in Assam.

(2) residence, and

(3) (*a*) the occupation of a building, or

(*b*) assessment to property-tax, tax on companies or profession tax, or

(*c*) assessment to income-tax, or

(*d*) military service, or

(*e*) the holding of land, or,

(*f*) as in the case of Bengal, Assam and Bihar and Orissa, the payment of local rates,[1] or

(*g*) payment of municipal or cantonment taxes or capitation-tax, or

(*h*) the holding of a rural office, or

(*i*) the payment of cesses, or,

(*j*) entry (in the case of Burma) in the capitation-tax or the *thathameda-tax* assessment roll.

Electoral Roll.

An electoral roll is prepared for every constituency,[2] on which are entered the names of all persons entitled to be registered as electors for that constituency. It has to be published in the constituency. Any mistake or omission in the preparation of the electoral roll is to be brought to the notice of the Revising Authority for correction.[3] His decision with regard to any point of dispute is final,[4] and the electoral roll amended in accordance therewith is republished. It comes into force from the date of such republication and continues in force for a period of three years at the end of which period a fresh roll is to be prepared.[5] This is the ordinary rule. It is provided, however, against it that the Governor-General in Council or a local Government, as the case may be, may direct the

[1] For instance, under the Village Chaukidari Act, 1870, or under the Bengal Village Self-Government Act, 1919, or under the Bengal Municipal Act, 1876, or under the Bihar and Orissa Village Administrative Act, 1922.

[2] Electoral Rule 9 (1).

[3] *Ibid.*, 9 (1).

[4] *Ibid.*, 9 (3).

[5] *Ibid.*, 9 (4).

preparation of a fresh roll at any time before the completion of the said period.[1]

If a constituency is required to elect a member or members after an electoral roll has ceased to be effective and before a fresh roll has been prepared, the old electoral roll will remain valid for the purposes of the particular election.[2]

Notwithstanding anything that has been said before, any person may apply to the proper authority for the amendment of an electoral roll for the time being in force and the Governor-General in Council or a local Government, as the case may be, may order the preparation of a list of amendments thereto, if necessary.[3]

Every local Government[4] is required to make regulations providing for—

(1) the authority by whom the electoral roll is to be prepared and the particulars to be contained in the roll;

(2) the time for the preparation of the roll;

(3) 'the publication of the roll in such manner and in such language as to give it wide publicity in the constituency to which it relates';

(4) the manner in which and the time within which claims and objections may be preferred;

(5) the constitution and appointment of Revising Authorities to dispose of claims and objections;

(6) the manner in which notices of claims or objections should be published; and

(7) the place, date and time at which and the manner in which claims or objections should be heard.

Such regulations made by a provincial Government for the purpose of elections to the provincial Legislative

[1] Electoral Rule 9 (4)

[2] *Ibid.*, 9 (5).

[3] *Ibid.*, 9 (6).

[4] *Ibid.*, 9 (2).

Council will also apply,[1] unless the Governor-General in Council otherwise directs, for the purpose of elections within that province to the Council of State or to the Legislative Assembly, as the case may be. And for the purpose of elections to the Legislative Assembly, similar regulations for the time being in force in the Punjab will apply to Delhi, and those for the time being in force in the United Provinces, to Ajmer-Merwara.

[1] The Legislative Assembly and the Council of State Electoral Rule 9 (2).

CHAPTER VII

ELECTORS FOR THE COUNCIL OF STATE[1]

Qualifications required of electors for the Council of State in Madras—In Bombay—In Bengal—In the United Provinces—In the Punjab—In Bihar and Orissa—In the Central Provinces and Berar—In Assam—In Burma—The Electoral Rule with regard to joint families.

In this and the three following chapters we shall state, as briefly as possible, the qualifications of electors for the different legislative bodies. We take up first the question of the franchise qualifications for the Council of State. As will be seen below, they are very high and vary considerably from province to province and from one part of a province to another according to the variation in local circumstances.

MADRAS[2]

A person is qualified as an elector for a general constituency who resided in the Presidency of Madras for not less than 120 days in the previous year[3] and who—

(1) has in the Presidency an estate the annual income of which is not less than Rs. 3,000; or

(2) is a pattadar or inamdar of land in the Presidency on which the assessment, including the water rate, is not less than Rs. 1,500; or

[1] The Council of State Electoral Rule 8, Schedule II.

[2] *Ibid.*, Schedule II, Part I, Madras.

[3] 'Previous year' means the financial year preceding that in which the electoral roll for the time being under preparation is first published. The expression has been used in this sense several times later on.

(3) receives from Government a malikana allowance the annual amount of which is not less than Rs. 3,000; or

(4) was in the previous year assessed on his own account to income-tax on a total income of not less than Rs. 20,000 ; or

(5) is or has been a non-official member of either Chamber of the Indian Legislature or was a non-official member of the Indian Legislative Council as constituted under the Government of India Act, 1915, or any Act repealed thereby, or is or has been at any time a non-official member of the Madras Legislative Council ; or

(6) is or has been a non-official President of the Madras Municipal Council or of a District Board or Taluk Board constituted under the Madras Local Boards Act, 1884, or the Madras Local Boards Act, 1920, or is the non-official Vice-President of the said Council or of a District Board; or

(7) is or has been the non-official Chairman or is the non-official Vice-Chairman of a Municipal Council constituted under the Madras District Municipalities Act, 1884, or the Madras District Municipalities Act, 1920 ; or

(8) is or has been a Fellow or an Honorary Fellow or is a Member of the Senate or Court of any University constituted by law in British India or is a member of the Council of the University of Rangoon ; or

(9) is the non-official President or Vice-President of any Co-operative Central Bank or Co-operative Banking Union ; or

(10) is recognized by the Government as the holder of the title of Shams-ul-Ulama or of the title of Mahamahopadhyaya.

No person other than a Muhammadan can be qualified as an elector for the Muhammadan constituency, and no Muhammadan can be qualified as an elector for the non-Muhammadan constituency.

BOMBAY[1]

General constituencies. A person is qualified as an elector for a general constituency who has a place of residence[2] in the constituency and who—

(1) is in Sind either a Jagirdar of the first or second class or a Zamindar who, in each of the three previous[3] revenue years, paid not less than Rs. 2,000 as land revenue on land situated in any district in Sind ; or

(2) is a Deccan Sardar or a Guzarat Sardar ; or

(3) is a sole alienee of the right of Government to the payment of rent or land revenue in respect of an entire village assessed to land revenue of not less than Rs. 2,000 or a Talukdar or a co-sharer holding on talukdari tenure land assessed to land revenue of not less than Rs. 2,000, or a Khot responsible for the payment of not less than Rs. 2,000 as land revenue ; or

(4) is a holder of land assessed or assessable to land revenue of not less than Rs. 2,000 ; or

(5) was in the previous financial year assessed to income-tax on an income of not less than Rs. 30,000 ; or

(6) has *mutatis mutandis* any of the qualifications specified in clauses (5), (8) and (10) in the case of the Madras Presidency ; or

(7) is or has been the President of the Municipal Corporation of the City of Bombay, or is or has been the non-official President or is the non-official Vice-President of a City Municipality within the meaning of section 3 (1)

[1] The Council of State Electoral Rule 8, Schedule II, Part II, Bombay.

[2] A person is deemed to have a place of residence in a constituency if he (i) ordinarily lives in the constituency, or (ii) has a family dwelling house in it and occasionally occupies it, or (iii) maintains in the constituency a dwelling house, ready for occupation, in charge of servants and occasionally occupies it.

[3] i.e. previous to the year in which the electoral roll for the time being under preparation is first published.

of the Bombay District Municipal Act, 1901, or of a District Local Board established under the Bombay Local Boards Act, 1884.

As in the case of Madras, no person other than a Muhammadan is qualified to be an elector for a Muhammadan constituency,[1] and no Muhammadan is qualified to be an elector for the non-Muhammadan constituency.

Special Constituency

A person is qualified as an elector for the Bombay Chamber of Commerce constituency who is a member of that Chamber and has a place of residence in India.

BENGAL[2]

General Constituencies—Non-Muhammadan

A person is qualified as an elector for a non-Muhammadan constituency who is neither a Muhammadan nor a European and who has a place of residence within the constituency, and who—

(1) (*a*) in the Burdwan or the Presidency Division paid during the previous[3] year, on his own account as a proprietor, land revenue amounting to not less than Rs. 7,500, or road and public works cesses amounting to not less than Rs. 1,875; or

(*b*) in the Dacca, the Rajshahi or the Chittagong Division paid during the previous year, on his own account as a proprietor, land revenue amounting to not less than Rs. 5,000 or road and public works cesses amounting to not less than Rs. 1,250; or

[1] In Bombay there are two Muhammadan constituencies; in Madras, there is only one.

[2] The Council of State Electoral Rule 8, Schedule II, Part III, Bengal.

[3] See the note on it in the case of Madras.

(2) (*a*) was in the previous year assessed to income-tax on an income of not less than Rs. 12,000; or

(*b*) is a member of a firm which in the previous year was assessed to income-tax and whose share of the firm's income on which the income-tax was so assessed was not less than Rs. 12,000; or

(3) has *mutatis mutandis* any of the qualifications mentioned in clauses (5) and (8) in the case of Madras; or,

(4) is or has been the non-official Chairman or is the non-official Vice-Chairman or Deputy Chairman of the Corporation of Calcutta, or is or has been the non-official Chairman or is the non-official Vice-Chairman of a Municipality constitued under the Bengal Municipal Act, 1884, or of a District Board established under the Bengal Local Self-Government Act, 1885; or

(5) is the non-official Chairman, Deputy Chairman or Vice-Chairman of any Co-operative Central Bank or Union or Provincial Co-operative Federation; or

(6) is the holder of the title of Mahamahopadhyaya.

Muhammadan Constituency

A person is qualified as an elector for a Muhammadan constituency who is a Muhammadan and has a place of residence within the constituency and who—

(1) paid during the previous[1] year, on his own account as a proprietor, land revenue amounting to not less than Rs. 600 or road and public works cesses amounting to not less than Rs. 125; or

(2) (*a*) was in the previous year assessed to income-tax on an income of not less than Rs. 6,000; or

(*b*) is a member of a firm which in the previous year was assessed to income-tax and whose share of the firm's income on which income-tax was so assessed was not less than Rs. 6,000; or

[1] See the note on it in the case of Madras.

(3) has any of the qualifications mentioned in clauses (3), (4) and (5) above in the case of the non-Muhammadan constituencies; or

(4) is the holder of the title of Shams-ul-Ulama.

Special Constituency

A person is qualified as an elector for the Bengal Chamber of Commerce constituency who has a place of residence in India and is a Chamber member of that Chamber or a person entitled to exercise the rights and privileges of Chamber-membership on behalf of and in the name of any firm, company or other corporation.

THE UNITED PROVINCES [1]

Non-Muhammadan and Muhammadan Constituencies

A person is qualified as an elector for a general constituency who has a place of residence in the constituency and who—

(1) is the owner of land in the constituency in respect of which land revenue amounting to not less than Rs. 5,000 per annum is payable; or

(2) is the owner of land in the constituency free of land revenue, if the land revenue nominally assessed on such land in order to determine the amount of rates payable in respect of the same, either alone or together with any land revenue payable by him as owner in respect of other lands in the constituency, amounts to not less than Rs. 5,000 per annum; or

(3) was in the previous year assessed to income-tax on an income of not less than Rs. 10,000; or

(4) has *mutatis mutandis* any of the qualifications mentioned in clauses (5), (8) and (10) in the case of Madras; or

[1] The Council of State Electoral Rule 8, Schedule II, Part IV.

(5) is or has been the non-official Chairman or is the non-official Vice-Chairman of a Municipality constituted under the United Provinces Municipalities Act, 1916, or of a District Board constituted under the United Provinces District Boards Act, 1906; or

(6) is or has been the President of a Chamber of Commerce in the United Provinces; or

(7) is the non-official President or Vice-President of a Co-operative Central Society.

A Muhammadan alone is qualified to be an elector for a Muhammadan constituency; and no Muhammadan is qualified to be an elector for a non-Muhammadan constituency.

THE PUNJAB [1]

Non-Muhammadan, Muhammadan and Sikh Constituencies

A person is qualified as an elector for a general constituency who resides in the constituency and who—

(1) is the owner or Crown tenant of land assessed to land revenue of not less than Rs. 750 per annum; or

(2) is an assignee of land revenue amounting to not less than Rs. 750 per annum; or

(3) was in the previous year assessed to income-tax on an income of not less than Rs. 15,000; or

(4) has *mutatis mutandis* any of the qualifications mentioned in clauses (5), (8) and (10) in the case of Madras; or

(5) is a Provincial Punjab Darbari; or

(6) is the non-official President or Vice-President of any Central Co-operative Bank or Union; or

(7) is or has been the non-official President or Vice-President of any Municipal Committee established under the Punjab Municipal Act, 1911, which has a population of 20,000 or over, or which is situate at the head-quarters

[1] The Council of State Electoral Rule 8, Schedule II, Part V.

station of a district, or is or has been the non-official Chairman or Vice-Chairman of a District Board constituted under the Punjab District Boards Act, 1883.

No person is qualified as an elector for a Muhammadan constituency who is not a Muhammadan or for the Sikh constituency who is not a Sikh; and no Muhammadan or Sikh is qualified as an elector for the non-Muhammadan constituency.

BIHAR AND ORISSA [1]

Non-Muhammadan Constituency

A person is qualified as an elector for the non-Muhammadan constituency who is not a Muhammadan and who has a place of residence[2] in the province of Bihar and Orissa and who—

(1) holds in his own right an estate or estates for which an aggregate amount of not less than Rs. 300 as local cess or an aggregate amount of not less than Rs. 1,200 as land revenue is payable per annum; or

(2) holds in his own right a tenure or tenures for which an aggregate amount of not less than Rs. 300 as local cess is payable per annum either directly to the Government or through a superior landlord; or

(3) was in the previous[3] year assessed on his own account to income-tax on an income of not less than Rs. 12,800; or

(4) has *mutatis mutandis* any of the qualifications mentioned in clauses (5) and (8) in the case of Madras; or

(5) is or has been the Chairman or the Vice-Chairman of a Municipality, or of a District Board, or of a District Committee, or is or has been the President or is the Vice-

[1] The Council of State Electoral Rule 8, Schedule II, Part VI.
[2] See the note on it in the case of Bombay.
[3] See the note on it in the case of Madras.

President of a Municipal Committee, or is or has been the Chairman of a District Council ; or

(6) is the holder of the title of Mahamahopadhyaya.

Muhammadan Constituency

A person is qualified as an elector for the Muhammadan constituency who is a Muhammadan and has a place of residence[1] in the province of Bihar and Orissa and who—

(1) holds in his own right an estate or estates for which an aggregate amount of not less than Rs. 750 as land revenue or an aggregate amount of not less than Rs. 187-8-0 as local cess is payable per annum ; or

(2) holds in his own right a tenure or tenures for which an aggregate amount of not less than Rs. 187-8-0 per annum is payable as local cess either directly to Government or through a superior landlord ; or

(3) was in the previous[2] year assessed on his own account to income-tax on an income of not less than Rs. 6,400 ; or

(4) has any of the qualifications specified in clauses (4) and (5) above in the case of the non-Muhammadan constituency ; or

(5) is the holder of the title of Shams-ul-Ulama.

THE CENTRAL PROVINCES[3]

A person is qualified as an elector for the Central Provinces constituency who has a place of residence[4] in the constituency and who—

(1) holds in proprietary right land, the land revenue or kamil-jama of which is not less than Rs. 3,000 ; or

(2) was in the previous year assessed to income-tax on an income of not less than Rs. 20,000 ; or

[1] See the note on it in the case of Bombay.
[2] See the note on it in the case of Madras.
[3] The Council of State Electoral Rule 8, Schedule II, Part VII.
[4] See the note on it in the case of Bombay.

(3) has *mutatis mutandis* any of the qualifications mentioned in clauses (5), (8) and (10) in the case of Madras; or

(4) is or has been the non-official President of a Municipal Committee or the non-official Chairman of a District Council.

BERAR [1]

A person is qualified as an elector for the Berar Council of State constituency who has a place of residence in the constituency and who—

(1) holds in other than tenancy right agricultural land, the land revenue assessed or assessable on which is not less than Rs. 1,000; or

(2) has any of the qualifications mentioned in clauses (2) and (3) above in the case of the Central Provinces; or

(3) is or has been the non-official President of a Municipal Committee established under the Central Provinces Municipalities Act, 1922, as applied to Berar, or has been the non-official Chairman of a Municipal Committee established under the Berar Municipal Law, 1886; or is or has been the non-official Chairman of a District Council established under the Central Provinces Local Self-Government Act, 1920, as applied to Berar, or has been the non-official Vice-Chairman of a District Board established under the Berar Rural Boards Law, 1885.

ASSAM [2]

Non-Muhammadan and Muhammadan Constituencies

A person is qualified as an elector for either of the general constituencies who has a place of residence[3] in the province of Assam and who—

(1) is liable to pay annually not less than Rs. 2,000

[1] The Berar Electoral Rule 7, Schedule II.
[2] The Council of State Electoral Rule 8, Schedule II, Part VIII.
[3] See the note on it in the case of Bombay.

as land revenue or not less than Rs. 200 as local rate ; or

(2) was in the previous year assessed to income-tax on an income of not less than Rs. 12,000 ; or

(3) has *mutatis mutandis* any of the qualifications mentioned in clauses (5), (8) and (10) in the case of Madras ; or

(4) is the non-official Chairman of any Central Co-operative Bank or Banking Union ; or

(5) is or has been a non-official Chairman of Commissioners appointed in Assam under the Bengal Municipal Act, 1876, or of a Municipality established in Assam under the Bengal Municipal Act, 1884, or of a Local Board established under the Assam Local Self-Government Act, 1915.

No person other than a Muhammadan is qualified as an elector in the Muhammadan constituency, and no Muhammadan is qualified as an elector in the non-Muhammadan constituency.

BURMA [1]

The General Constituency

A person is qualified as an elector for the Burma constituency who has a place of residence[2] in the province of Burma and who—

(1) paid during the previous year land revenue amounting to not less than Rs. 300 ; or

(2) was in the previous year assessed to income-tax on an income of not less than Rs. 3,000 ; or

(3) has *mutatis mutandis* any of the qualifications mentioned in clauses (5), (8) and (10) in the case of Madras ; or

[1] The Council of State Electoral Rule 8, Schedule II, Part IX.
[2] See the note on this in the case of Bombay.

(4) is the non-official Chairman or Vice-Chairman of a Co-operative District Central Bank, or

(5) is or has been the President or Vice-President of the Rangoon Municipal Committee or is or has been the President or is the Vice-President of any other Municipal Committee established under the Burma Municipal Act 1898, or of a District Council.

The European Commerce Constituency

Any person is 'qualified as an elector for the Burma Chamber of Commerce constituency who has a place of residence in Burma and is a Chamber member of that Chamber or a person entitled to exercise the rights and privileges of Chamber-membership on behalf of, and in the name of, any firm, company, or other corporation.'

Joint Families

The rule with regard to joint families is as follows:—

Where property is held or payments are made jointly by the members of a joint family, the family is to be adopted as the unit for deciding whether the requisite qualification for registration on the electoral roll exists in the particular case; and if it does exist, the person qualified will be the manager of the family or the member authorized in that behalf by the family concerned.

CHAPTER VIII

ELECTORS FOR THE LEGISLATIVE ASSEMBLY[1]

Qualifications required of electors for the Legislative Assembly in Madras—In Bombay—In Bengal—In the United Provinces—In the Punjab—In Bihar and Orissa—In the Central Provinces—In Assam—In Burma—In Delhi.

As we have noticed in the case of the Council of State, the franchise for the Legislative Assembly is not based upon any uniform principle, but varies widely from province to province and, to a less extent, from one part of a province to another.

MADRAS[2]

General Constituencies

Madras City constituency

A person is qualified as an elector for the Madras City constituency who is neither a Muhammadan nor a European and who resided in the constituency for not less than 120 days in the previous year[3] and who—

(1) was in the previous year assessed to an aggregate amount of not less than Rs. 20 in respect of one or more of the following taxes, namely, property tax, tax on companies, or profession tax; or

(2) was in the previous year assessed to income-tax.

[1] The Legislative Assembly Electoral Rule 8, Schedule II.

[2] *Ibid.*, Part I.

[3] 'Previous year' means the financial year preceding that in which the electoral roll or the list of amendments thereto, as the case may be, for the time being under preparation is first published. The expression has been used in this sense in subsequent pages.

Rural constituencies.

A person is qualified as an elector in any other general constituency[1] who resided in the constituency for not less than 120 days in the previous year and who—

(*a*) is registered as a ryotwari pattadar or as an inamdar of land of which the annual rent value is not less than Rs. 50; or

(*b*) holds on a registered lease under a ryotwari pattadar or inamdar land the annual rent value of which is not less than Rs. 50; or

(*c*) is registered jointly with the proprietor under Section 14 of the Malabar Land Registration Act, 1895, as the occupant of land of which the annual rent value is not less than Rs. 50 ; or

(*d*) is a landholder holding an estate of which the annual rent value is not less than Rs. 50 ; or

(*e*) holds as a 'ryot' or as a tenant under a landholder, land of which the annual rent value is not less than Rs. 50 ; or

(*f*) was in the previous year assessed to income-tax ; or

(*g*) was in the previous year assessed in a Municipality included in the constituency to an aggregate amount of not less than Rs. 20 in respect of one or more of the following taxes, namely, property tax, tax on companies, or profession tax.

No Muhammadan or European is qualified as an elector for a non-Muhammadan constituency ; and a person is qualified as an elector for a Muhammadan or the European constituency according as he is a Muhammadan or a European.

A European is not to be disqualified to be an elector for the Madras (European) constituency by reason only of non-residence, if he is employed in the constituency and his non-residence is due to absence on leave from such employment.

[1] The Legislative Assembly Electoral Rule 8, Schedule II, Part I.

Special Constituencies

The Landholders' constituency. A person is qualified to be an elector for the landholders' constituency[1] if his name is on the electoral roll of any landholders' constituency of the Madras Legislative Council.

The Indian Commerce constituency. 'Every Indian and one duly authorized representative of every Indian partnership shall be qualified as an elector on the roll of the Indian Commerce constituency[2] if such person has resided in the Presidency for not less than 120 days in the previous year, and if he or the partnership, as the case may be, has been assessed to income-tax in the previous year on an income of not less than Rs. 10,000 derived from business, within the meaning of the Income-tax Act, 1922.'

'Indian partnership' means any non-European joint family, or any firm, association or company of which no partner or director is a European.

The rule with regard to joint families[3] in respect of elections to the Legislative Assembly is practically the same as in the case of the Council of State.

A person is qualified as an elector either in his personal capacity or in the capacity of a representative of a joint family or of joint pattadars, but not in both capacities.

BOMBAY[4]

General Constituencies

A person[5] is qualified as an elector for a non-Muhammadan or Muhammadan constituency who, on the first day

[1] The Legislative Assembly Electoral Rule 8, Schedule II, Part I.
[2] *Ibid.*, Part I. [3] *Ibid.*, Part I. [4] *Ibid.*, Part II.
[5] *Ibid.*

of January preceding the date of publication of the electoral roll, had a place of residence within the constituency or within a contiguous constituency of the same communal description and who—

Non-Muhammadan and Muhammadan constituencies.

(1) in the case of the Sind constituencies, held in his own right, on the first day of January aforesaid, land on which, in any one of the five revenue years previous to the publication of the electoral roll, 'an assessment of not less than Rs. 37-8-0 land revenue in the Upper Sind Frontier District and of not less than Rs. 75 land revenue in any other district' had been paid; or

(2) in the case of any other constituency, held in his own right, on the first day of January aforesaid, land 'assessed at, or of the assessable value of, not less than Rs. 37-8-0 land revenue in the Panch Mahals or Ratnagiri District and not less than Rs. 75 land revenue elsewhere'; or

(3) was on the aforesaid date the alienee of the right of Government to the payment of rent or land revenue, amounting to Rs. 37-8-0 in the Panch Mahals or Ratnagiri or Upper Sind Frontier District and of Rs. 75 elsewhere, or was a Khot or a sharer in a Khoti village in the constituency or a sharer in a bhagdari or narvadari village in the constituency, responsible for the payment of Rs. 37-8-0 as land revenue in the Panch Mahals or Ratnagiri District and Rs. 75 as land revenue elsewhere; or

(4) was assessed to income-tax in the previous year.

The European constituency.

A person is qualified as an elector for the Bombay European constituency[1] whose name is on the electoral roll of either European constituency of the Bombay Legislative Council or who is qualified for enrolment in either of such rolls.

[1] The Legislative Assembly Electoral Rule 8, Schedule II, Part II.

Special Constituencies

The Land-holders' constituencies.

1. A person[1] is qualified as an elector for the Sind Jagirdars and Zamindars' constituency who is a Jagirdar of the first or second class in Sind, or a Zamindar who, in each of the three revenue years preceding the publication of the electoral roll, paid not less than Rs. 1,000 as land revenue on land situated in any district in Sind.

2. A person is qualified as an elector for the Deccan and Guzarat Sardars and Inamdars' constituency whose name is entered in the list for the time being in force under the Resolutions of the Government of Bombay in the Political Department, No. 2363, dated July 23, 1867, and No. 6265, dated September 21, 1909, or who, on the first day of January preceding the publication of the electoral roll, was the sole alienee of the right of Government to the payment of rent or land revenue in respect of an entire village in the Presidency of Bombay excluding Sind and Aden, or was the sole holder on talukdari tenure of such a village.

The Indian Commerce constituency.

The members[2] of the Indian Merchants' Chamber and Bureau and of the Bombay Millowners' Association and of the Ahmedabad Millowners' Association are qualified as electors respectively for the constituency comprising the Association of which they are members.

No person other than a Muhammadan is qualified as an elector for a Muhammadan constituency, and no Muhammadan or European is qualified as an elector for a non-Muhammadan constituency.

[1] The Legislative Assembly Electoral Rule 8, Schedule II, Part II.
[2] *Ibid.*

BENGAL [1]

General Constituencies

Calcutta Non-Muhammadan constituency.

1. A person[2] is qualified as an elector for the Calcutta non-Muhammadan constituency who is neither a Muhammadan nor a European and who has a place of residence in Calcutta and who—

(*a*) during and in respect of the previous[3] year paid not less than Rs. 60 as consolidated rate levied under Chapter X of the Calcutta Municipal Act, 1923, or as taxes levied under Chapter XII of that Act [4] ; or

(*b*) was in the previous year assessed to income-tax on an income of not less than Rs. 5,000 ; or

(*c*) is a member of a firm which in the previous year was assessed to income-tax and whose share of the firm's income on which income-tax was so assessed was not less than Rs. 5,000.

Non-Muhammadan and Muhammadan Constituencies.

2. A person [5] is qualified as an elector for any other general constituency who has a place of residence in the constituency and who—

(*a*) during and in respect of the previous[6] year, or, as the case may be, during and in respect of the Bengali year preceding that in which the electoral roll for the time being under preparation is first published, paid not less than Rs. 60 as consolidated rate levied under Chapter X of the Calcutta Municipal Act, 1923, or as taxes levied under Chapter XII of that Act[7] ; or

(*b*) paid, during and in respect of such year, in the

[1] L. A. E. R. 8, Sch. II, Part III. [2] *Ibid.*

[3] See the note on it in the case of Madras.

[4] Provided that his name is entered in the Municipal assessment book in respect of the payment.

[5] The Legislative Assembly Electoral Rule 8, Schedule II, Part III.

[6] See the note on it in the case of Madras.

[7] Provided that his name is entered in the municipal assessment book in respect of the payment.

Municipality of Howrah, municipal taxes or fees of not less than Rs. 10, or in any other Municipality or in a Cantonment municipal or cantonment taxes or fees of not less than Rs. 5; or

(*c*) paid, during and in respect of such year, road and public works cesses under the Cess Act, 1880, of not less than Rs. 5; or

(*d*) paid, during and in respect of such year, chaukidari tax under the Village Chaukidari Act, 1870, or union rate under the Bengal Village Self-Government Act, 1919, of not less than Rs. 5; or

(*e*) was in the previous year assessed to income-tax on an income of not less than Rs. 5,000; or

(*f*) has the qualification specified in clause 1 (*c*) above in the case of the Calcutta non-Muhammadan constituency.

The European constituency.

2. A person[1] is qualified as an elector for the Bengal European constituency who is a European and has a place of residence[2] in the constituency and who—

(*a*) was in the previous year assessed to income-tax on an income of not less than Rs. 12,000, or

(*b*) is a member of a firm which in the previous year was assessed to income-tax and whose share of the firm's income on which income-tax was so assessed was not less than Rs. 12,000.

The same communal qualification is required of an elector in Bengal as in Bombay.

Special Constituencies[3]

A person is qualified as an elector for the Bengal Land-holders' constituency who has a place of resi-

[1] The Legislative Assembly Electoral Rule 8, Schedule II, Part III.

[2] i.e., he must ordinarily live within the constituency, or maintain within its limits a dwelling house ready for occupation and occasionally occupy it.

[3] The Legislative Assembly Electoral Rule 8, Schedule II, Part III.

dence in the constituency and who during the previous year—

The Landholders' constituency.

(1) in the Burdwan Division or the Presidency Division paid on his own account as a proprietor land revenue amounting to not less than Rs. 6,000, or road and public works cesses amounting to not less than Rs. 1,500 ; or

(2) in the Dacca, the Rajshahi or the Chittagong Division paid on his own account land revenue amounting to not less than Rs. 4,000, or road and public works cesses amounting to not less than Rs. 1,000.

The Indian Commerce constituencies.

The members[1] of the Bengal National Chamber of Commerce and of the Marwari Association and of the Bengal Mahajan Sabha are qualified as electors respectively for the constituency comprising the Chamber, Association and Sabha of which they are members.

THE UNITED PROVINCES[2]

General Constituencies

Urban constituencies.

A person[3] is qualified as an elector for a non-Muhammadan or Muhammadan urban constituency who is not a European and who—

(1) has a place of residence in the constituency or within two miles of the boundary thereof, and—

(*a*) is, in any place in the area aforesaid in which a house or building tax is in force, the owner or

[1] 'Member' includes any person entitled to exercise the rights and privileges of membership on behalf and in the name of any firm, company or corporation registered as a member.

[2] The Legislative Assembly Electoral Rule 8, Schedule II, Part IV.

[3] *Ibid.*

tenant of a house the rental value of which is not less than Rs. 180 per annum ; or

(*b*) was, in any area in the constituency in which no house or building tax is in force, assessed in the previous year to municipal tax on an income of not less than Rs. 1,000 per annum ; or

(*c*) is, in any area in the constituency in which neither a house or building tax nor a municipal tax based on income is in force, the owner or tenant of a house or building of which the rental value is not less than Rs. 180 per annum ; or

(*d*) has within the constituency any of the qualifications based on the holding of land, as stated below, for an elector of a rural constituency ; or

(2) has a place of residence in the constituency and was in the previous year assessed to income-tax.

Rural constituencies.

A person[1] is qualified as an elector for a non-Muhammadan or Muhammadan rural constituency who is not a European and who has a place of residence in the constituency and—

(1) is, in an urban area included in the constituency in which a house or building tax is in force, the owner or tenant of a house or building, the rental value of which is not less than Rs. 180 per annum ; or

(2) was, in an urban area included in the constituency in which no house or building tax is in force, assessed in the previous year to municipal tax on an income of not less than Rs. 1,000 per annum ; or

(3) is, in an urban area included in the constituency where neither a house or building tax nor a municipal tax

[1] The Legislative Assembly Electoral Rule 8, Schedule II, Part V.

based on income is in force, the owner or tenant of a house or building, the rental value of which is not less than Rs. 180 per annum; or

(4) is the owner of land in the constituency in respect of which land revenue amounting to not less than Rs. 150 per annum is payable; or

(5) is the owner of land in the constituency free of land revenue, if the land revenue nominally assessed on such land in order to determine the amount of rates payable in respect of the same, either alone or together with any land revenue payable by him as owner in respect of other lands in the constituency, amounts to not less than Rs. 150 per annum; or

(6) being a resident in the hill pattis of Kumaon—

(*a*) is liable to pay land revenue or rent amounting to not less than Rs. 25 per annum; or

(*b*) is the owner of a fee-simple estate; or

(*c*) owns land in the hill pattis free of land revenue, if the land revenue nominally assessed on such land in order to determine the amount of rates payable in respect of the same, either alone or together with any land revenue payable by him as owner in respect of other lands in the hill pattis, amounts to not less than Rs. 25 per annum; or

(7) being in the constituency a permanent tenure holder or a fixed rate tenant as defined in the Agra Tenancy Act, 1901, or an under-proprietor or occupancy tenant as defined in the Oudh Rent Act, 1886, is liable to pay rent as such of not less than Rs. 150 per annum; or

(8) (*a*) being in the constituency a tenant as defined in the Agra Tenancy Act, 1901, or the Oudh Rent Act, 1886, other than a sub-tenant, holds land as such in respect of which rent of not less than Rs. 150 per annum or its equivalent in kind is payable; or

(*b*) in areas in the United Provinces in which the Agra Tenancy Act, 1901, or the Oudh Rent Act, 1886, is not in force, holds land as a tenant in respect of which rent of not less than Rs. 150 per annum or its equivalent in kind is payable; or

(9) was assessed to income-tax in the previous year.

Both in the case of the urban and rural constituencies no person other than a Muhammadan is qualified as an elector for a Muhammadan constituency, and no Muhammadan is qualified as an elector for a non-Muhammadan constituency.

The European constituency.

A person[1] is qualified as an elector for the United Provinces (European) constituency who is a European and has a place of residence in the United Provinces of Agra and Oudh and has any of the qualifications mentioned in clauses (4), (5), (6), (7), (8) and (9) above in the case of a non-Muhammadan or Muhammadan rural constituency.

Special Constituencies[2]

The Landholders' constituency.

A person is qualified as an elector for the United Provinces Landholders' constituency who has a place of residence in the constituency and—

(1) is the owner[3] of land in the constituency in respect of which land revenue amounting to not less than Rs. 5,000 per annum is payable; or

(2) is the owner[4] of land in the constituency free of land revenue, if the land revenue nominally assessed on such land in order to determine the amount of rates payable in respect of the same, either alone or together with any land revenue payable by him as owner in respect of other lands in the constituency, amounts to not less than Rs. 5,000 per annum.

[1] The Legislative Assembly Electoral Rule 8, Schedule II, Part IV.
[2] *Ibid.*
[3] In his own personal right and not in a fiduciary capacity.
[4] *Ibid.*

THE PUNJAB[1]

General Constituencies

A person[2] is qualified as an elector for a general constituency who resides in the constituency and who—

(1) owned for the twelve months preceding the date of publication of the electoral roll immovable property, not being land assessed to land revenue but including any building erected on such land, of the value of not less than Rs. 15,000 or of an annual rental value of not less than Rs. 336 : ' provided that a person must be deemed to have owned such property for any period during which it was owned by any person through whom he derives title by inheritance ' ; or

(2) owns land assessed to land revenue of not less than Rs. 100 per annum ; or

(3) is an assignee of land revenue amounting to not less than Rs. 100 per annum ; or

(4) is a tenant or lessee, under the terms of a lease for a period of not less than three years, of Crown land for which rent of not less than Rs. 100 per annum is payable : ' provided that, when the amount payable is assessed from harvest to harvest, the annual rent payable by such person must be deemed to be the annual average amount payable by him in the three years preceding the date of publication of the electoral roll ' ; or

(5) was during the financial year preceding the date of publication of the electoral roll assessed to income-tax on an income of not less than Rs. 5,000.

No person is qualified as an elector for a Muhammadan constituency who is not a Muhammadan or for a Sikh constituency who is not a Sikh, and no Muhammadan or Sikh is qualified as an elector for a non-Muhammadan constituency.

[1] The Legislative Assembly Electoral Rule 8, Schedule II, Part V.
[2] *Ibid.*

Special Constituency[1]

The Land-holders' constituency.

A person is qualified as an elector for the land-holders' constituency who resides in the Punjab and who is—

(1) the owner of land assessed to land revenue of not less than Rs. 1,000 per annum ; or

(2) an assignee of land revenue amounting to not less than Rs. 1,000 per annum.

BIHAR AND ORISSA[2]

General Constituencies

Non-Muhammadan and Muhammadan constituencies.

A person[3] is qualified as an elector for a general constituency who has a place of residence in the constituency and—

(1) holds an estate or estates, whether revenue-paying or revenue-free or rent-free, for which an aggregate amount of not less,—

(*a*) in the case of land in the Patna Division, than Rs. 30, or

(*b*) in the case of land in the Bhagalpur and Tirhut Divisions, than Rs. 24, or

(*c*) in the case of land in the Orissa and Chota Nagpur Divisions, than Rs. 12,

is payable direct to the treasury as local cess ; or

(2) holds a tenure or tenures which is or are valued for the purpose of local cess at an aggregate amount of not less,—

(*a*) in the case of tenures in the Patna Division, than Rs. 400 per annum, or

(*b*) in the case of tenures in the Chota Nagpur Division, than Rs. 300 per annum, or

[1] The Legislative Assembly Electoral Rule 8, Schedule II, Part V.

[2] *Ibid.*, Part VI.

[3] *Ibid.*

(*c*) in the case of tenures in the Bhagalpur Division, than Rs. 200 per annum, or

(*d*) in the case of tenures in the Tirhut Division, than Rs. 150 per annum, or

(*e*) in the case of tenures in the Orissa Division, than Rs. 100 per annum ; or

(3) holds land as a raiyat and pays an annual aggregate rent or local cess amounting respectively—

(*a*) to Rs. 160 and Rs. 5 in the Patna Division, or

(*b*) to Rs. 96 and Rs. 3 in the Tirhut Division, or

(*c*) to Rs. 64 and Rs. 2 in the Orissa Division, or

(*d*) to Rs. 40 and Rs. 1-4-0 in the Chota Nagpur Division, or

(*e*) to Rs. 144 and Rs. 4-8-0 in the Bhagalpur and Monghyr Districts, or

(*f*) to Rs. 96 and Rs. 3 in the Purnea and Santhal Parganas Districts ; or

(4) was in the previous year assessed to income-tax on an income of not less than Rs. 3,840 ; or

(5) was in the previous year assessed to an aggregate amount of not less than Rs. 15 in respect of any municipal or cantonment rates or taxes.

No person who is not a Muhammadan is qualified as an elector for a Muhammadan constituency and no Muhammadan is qualified as an elector for a non-Muhammadan constituency.

Special Constituency

The Land-holders' constituency.

A person is qualified as an elector for the landholders' constituency who has a place of residence in the Province of Bihar and Orissa and pays[1] annually land revenue or local cess of an aggregate amount of not less than Rs. 10,000 and Rs. 2,500 respectively.

[1] As proprietor in his own right and not in a fiduciary capacity.

THE CENTRAL PROVINCES [1]

General Constituencies

Muhammadan and non-Muhammadan constituencies.

A person is qualified as an elector for a general constituency who has a place of residence in the constituency and—

(1) owns or occupies as a tenant within an urban area in the constituency a house, or part of a house, the annual rental value of which is not less—

(*a*) in the case of a house in the Nagpur Municipality or in the Jubbalpore Municipality or Cantonment, than Rs. 240, and

(*b*) in the case of a house in any other urban area, than Rs. 180,

'provided that, where such house or building or part is held by two or more persons in shares, no person shall be qualified in respect of a share the annual rental value of which is less than Rs. 240, or Rs. 180, as the case may be'; or

(2) is a proprietor or thekadar of an estate, or of a share of it, the land revenue or kamil-jama of which is not less than Rs. 300; or

(3) holds, as a proprietor or thekadar in proprietary right, land, the assessed or assessable revenue or rent of which is not less—

(*a*) in the case of land in Raipur, Bilaspur, Drug, Chanda and Betul Districts, than Rs. 90, or

(*b*) in the case of land in Bhandara, Balaghat, Nimar, Chhindwara and Seoni Districts, than Rs. 120, or

[1] Legislative Assembly Electoral Rule 8, Schedule II, Part VII.

(c) in the case of land in any other district, than Rs. 150; or

(4) was in the previous year[1] assessed to income-tax.

No person other than a Muhammadan is qualified as an elector for the Muhammadan constituency, and no Muhammadan is qualified as an elector for a non-Muhammadan constituency.

Special Constituency[2]

The Land-holders' constituency.

A person is qualified as an elector for the landholders' constituency who has a place of residence in the constituency and who—

(1) is the holder of a hereditary title recognized by Governnent and owns agricultural land in proprietary right; or

(2) is the ower of an estate as defined in Section 2 (3) of the Central Provinces Land Revenue Act, 1917; or

(3) holds land as a proprietor, the land revenue or kamil-jama of which is not less than Rs. 5,000.

BERAR[3]

A person is qualified as an elector for the Berar Legislative Assembly constituency who is not a Muhammadan and who has a place of residence in the constituency, and—

(a) owns or occupies as a tenant within an urban area in the constituency a house or building, or part of a house or building, the annual rental value of which is not less—

(i) in the case of a house or building in the Amraoti City and Camp Municipalities, than Rs. 240, and

[1] See the note on it in the case of Madras before.

[2] Legislative Assembly Electoral Rule 8, Schedule II, Part VII.

[3] Berar Electoral Rule 7, Schedule II.

(ii) in the case of a house, or building in any other urban area, than Rs. 180[1] ; or

(*b*) holds in the constituency agricultural land in other than tenancy right which is assessed or assessable to land revenue of not less—

(i) in the Yeotmal district, than Rs. 120, and

(ii) in all other districts, than Rs. 150; or

(*c*) was in the previous year assessed to income-tax.

ASSAM[2]

A person[3] is qualified as an elector for any constituency who during the previous year resided within the constituency and who—

(1) was in the previous year assessed in respect of municipal or cantonment rates or taxes to an aggregate amount of not less than Rs. 20 ; or

(2) was in the previous year assessed to a tax of not less than Rs. 10 in a Union under Chapter III of the Bengal Municipal Act, 1876 ; or

(3) was in the previous year assessed to a chaukidari tax of not less than Rs. 2 under the Village Chaukidari Act, 1870, in the Sylhet, Cachar or Goalpara District; or

(4) in any district other than those mentioned in clause (3)—

(*a*) owns land, the land revenue on which has been assessed or is assessable at not less than Rs. 45 per annum ; or

[1] 'Provided that, where such house or building or part is held by two or more persons in shares, no person shall be qualified in respect of a share the annual rental value of which is less than Rs. 240 or Rs. 180, as the case may be.'

[2] Legislative Assembly Electoral Rule 8, Schedule II, Part VIII.

[3] *Ibid.*

(*b*) is liable to pay a local rate of not less than Rs. 3 per annum ; or

(5) was in the previous year assessed to income-tax on an income of not less than Rs. 3,600.

No person is qualified as an elector for the Muhammadan constituency who is not a Muhammadan or for the European constituency who is not a European, and no Muhammadan or European is qualified as an elector for a non-Muhammadan constituency.

A European is not to be 'disqualified to be an elector for the Assam European constituency by reason only of non-residence, if he is employed in the constituency and his non-residence is due to absence on leave from such employment.'

BURMA[1]

A person is qualified as an elector of any constituency who has a place of residence in the province of Burma and who—

(1) paid during and in respect of the previous agricultural[2] year land revenue amounting to not less than—

(*a*) Rs. 150 in Lower Burma, or

(*b*) Rs. 100 in Upper Burma ; or

(2) paid during and in respect of the previous agricultural year thathameda-tax amounting to not less than Rs. 25 ; or

(3) was in the previous financial year[2] assessed to income-tax.

[1] Legislative Assembly Electoral Rule 8, Schedule II, Part IX.

[2] '"Previous agricultural year" and "previous financial year" mean, respectively, the agricultural and financial year preceding that in which the electoral roll or the list of amendments thereto, as the case may be, for the time being under preparation is first published.'

No person is qualified as an elector for the European constituency who is not a European, and no European is qualified as an elector for the non-European constituency.

DELHI[1]

The Delhi constituency.

A person[2] is qualified as an elector for the Delhi constituency who resides in the constituency and who—

(1) owned in the constituency for the twelve months preceding the date of the publication of the electoral roll immovable property, not being land assessed to land, revenue but including any building erected on such land, of the value of not less than Rs. 15,000 or of an annual rental value of not less than Rs. 336, or was tenant of such immovable property for a like period :

' Provided that a person shall be deemed to have owned such property for any period during which it was owned by any person through whom he derives title by inheritance ' ; or

(2) owns land in the constituency assessed to land revenue of not less than Rs. 100 per annum ; or

(3) is an assignee of land revenue amounting to not less than Rs. 100 per annum ; or

(4) is a tenant or lessee, under the terms of a lease for a period of not less than three years, of Crown land in the constituency for which rent of not less than Rs. 100 per annum is payable :

' Provided that, when the amount payable is assessed from harvest to harvest, the annual rent payable by such person shall be deemed to be the annual average amount payable by him in the three years preceding the date of the publication of the electoral roll ' ; or

[1] Legislative Assembly Electoral Rule 8, Schedule II, Part X.
[2] *Ibid*.

(5) was during the financial year preceding the date of the publication of the electoral roll assessed to income-tax on an income of not less than Rs. 5,000.

AJMER-MERWARA [1]

The Ajmer-Merwara constituency.

A person is qualified as an elector for the Ajmer-Merwara constituency who resides in the constituency and who—

(*a*) owned ' in the constituency for the twelve months preceding the date of the publication of the electoral roll immovable property, not being land assessed to land revenue or granted free of land revenue, but including any building erected on such land, of the value of not less than Rs. 5,000, or of an annual rental of not less than Rs. 300, or has been tenant of such immovable property for a like period:

' Provided that a person shall be deemed to have owned such property for any period during which it was owned by any person through whom he derives title by inheritance;' or

(*b*) owns land in the constituency assessed to land revenue of not less than Rs. 150 per annum; or

(*c*) is the assignee of land revenue amounting to not less than Rs. 150 per annum; or

(*d*) pays rent of not less than Rs. 200 per annum as an ex-proprietary tenant of agricultural land; or

(*e*) pays rent of not less than Rs. 300 per annum as a tenant, otherwise than in ex-proprietary right, of agricultural land of which he has been such tenant during the three years preceding the date of the publication of the electoral roll; or

(*f*) was assessed to income-tax during the financial year preceding the date of the publication of the electoral roll.

[1] Legislative Assembly Electoral Rule 8, Schedule II, Part XI.

CHAPTER IX

QUALIFICATIONS OF ELECTORS FOR THE BENGAL AND UNITED PROVINCES LEGISLATIVE COUNCILS

Electors for the Bengal Legislative Council—General constituencies: urban and rural constituencies other than Calcutta constituencies, Calcutta constituencies, European constituencies, and the Anglo-Indian constituency—Special constituencies: Landholders' constituency, Calcutta University constituency, Dacca University constituency, and Commerce and Industry constituencies.
Electors for the United Provinces Legislative Council—General constituencies: urban constituencies, rural constituencies, and the European constituency—Special constituencies: The Talukdars' constituency, Agra Landholders' constituencies, Commerce and Industry constituencies, and the University constituency.

QUALIFICATIONS [1] OF ELECTORS FOR THE BENGAL LEGISLATIVE COUNCIL

General Constituencies

A person is qualified as an elector (*a*) for a non-Muhammadan constituency[2] if he is neither a Muhammadan nor a European nor an Anglo-Indian, and (*b*) for a Muhammadan, European or Anglo-Indian constituency according as he is a Muhammadan, European or Anglo-Indian. This is not all that is required for qualifying a person for registration as an elector. He must possess further qualifications as stated below:—

Subject to the communal requirements stated above,

[1] Bengal Legislative Council Electoral Rule 8, Schedule II. We have, in stating the Electoral Rules, retained in most cases the exact language of the Rules in order to ensure accuracy.
[2] Bengal Electoral Rule 8, Schedule II.

a person is qualified as an elector for an urban or rural constituency, other than a Calcutta constituency, who has a place of residence in the constituency, and who—

Urban and rural constituencies other than Calcutta constituencies.

(1) paid, during and in respect of the previous[1] year or, as the case may be, during and in respect of the Bengali year preceding that in which the electoral roll for the time being under preparation, is first published,—

(*a*) in the Municipality of Howrah municipal taxes or fees of not less that Rs. 3 or in any other municipal or cantonment area, municipal or cantonment taxes or fees of not less than Rs. 1-8-0, or

(*b*) road and public works cesses under the Cess Act, 1880, of not less than Re. 1, or

(*c*) chaukidari tax under the Village Chaukidari Act, 1870, or union rate under the Bengal Village Self-Government Act, 1919, of not less than Rs. 2 ; or

(2) was in the previous year assessed to income-tax ; or

(3) is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular forces.[2]

Subject to the communal requirements stated before, a person is entitled to be an elector for a Calcutta constituency[3] who has a place of residence therein or who, having a place of residence in Calcutta as defined in Section 3 (11) of the

Calcutta constituencies.

[1] Here, as elsewhere, the expression ' previous year ' means the financial year preceding the year of the first publication of the electoral roll.

[2] Bengal Electoral Rule 8, Schedule II.

[3] *Ibid.*

Calcutta Municipal Act, 1923, has a place of business within the constituency, and who—

(1) during the previous year—

(*a*) was entered in the municipal assessment book as—

(i) the owner and occupier of some land or building in Calcutta separately numbered and valued for assessment purposes at not less than Rs. 150 per annum ; or

(ii) the owner or occupier of some land or building in Calcutta separately numbered and valued for assessment purposes at not less than Rs. 300 per annum :

Provided that no person is to be qualified in virtue of any of the above qualifications unless the owner and occupier's share, or the owner's or occupier's share, as the case may be, of the consolidated rate on such land or building for the aforesaid year was paid during that year ; or

(*b*) paid in respect of that year on his sole account and in his own name not less than Rs. 24 either in respect of the consolidated rate levied under Chapter X, or in respect of the taxes levied under Chapter XI, or in respect of the taxes levied under Chapter XII, of the Calcutta Municipal Act, 1923 :

Provided that, if any payment was made in respect of the consolidated rate, a person will be qualified only if his name is entered in the Municipal Assessment Book in respect of the holding for which the payment was made ; or

(2) (*a*) was assessed to income-tax in the previous year, or

(*b*) is a member of a firm which in the previous

year was assessed to income-tax and whose share of the firm's income on which income-tax was so assessed was not less than the minimum on which the tax is leviable; or

(3) is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular forces.

European constituencies.

Subject to the communal requirements stated before, a person is qualified as an elector for a European constituency[1] who has a place of residence in the constituency and has any of the qualifications prescribed for an elector of any urban or rural constituency included in the area of such European constituency.

The Anglo-Indian constituency.

Subject to the communal requirements stated before, a person is qualified as an elector for the Anglo-Indian constituency[2] who has a place of residence in Bengal and has any of the qualifications prescribed for an elector of any urban or rural constituency.

In the case of a joint family,[3] the family is to be adopted as the unit for deciding whether the requisite qualification exists; and if it does exist, the person qualified will be the manager of the family.

A person is not qualified as an elector for a general constituency by virtue of any property held or payment made as a trustee, administrator, receiver or guardian or in any other fiduciary capacity.

SPECIAL CONSTITUENCIES

Landholders' constituencies.

A person is qualified as an elector for a landholders' constituency[4] who has a place of residence in the constituency and who during the previous year—

(1) in the case of the Burdwan Landholders'

[1] Bengal Electoral Rule 8, Schedule II.
[2] *Ibid.* [3] *Ibid.* [4] *Ibid.*

and Presidency Landholders' constituencies, paid, on his own account as a proprietor, land revenue amounting to not less than Rs. 4,500 or road and public works cesses amounting to not less than Rs. 1,125, or

(2) in the case of the Dacca, Rajshahi and Chittagong Landholders' constituencies, paid, on his own account as a proprietor or a permanent tenure-holder, land revenue amounting to not less than Rs. 3,000 or road and public works cesses amounting to not less than Rs. 750.

Calcutta University constituency.

A person is qualified as an elector for the Calcutta University constituency[1] who has a place of residence in Bengal and is a member of the Senate or an Honorary Fellow of the University, or a graduate of the University of not less than seven years' standing.

Dacca University constituency.

A person is qualified as an elector for the Dacca University constituency[2] who—

(1) has a place of residence in Bengal and is a member of the Court or a registered graduate of the University, or

(2) has a place of residence in the Dacca Division or in the Chittagong Division, and would have been qualified to be registered as a graduate of the University, if he had not before the first of April, 1920, been registered as a graduate of any other Indian University.

Commerce and industry constituencies.

The Chamber members of the Bengal Chamber of Commerce[3] and the permanent members of the Indian Jute Mills Association, of the Indian Tea Association, and of the Indian Mining Association are qualified respectively as electors

[1] Bengal Electoral Rule 8, Schedule II.

[2] *Ibid.*

No person can vote at any general election both in the Calcutta University and in the Dacca University constituency. See Bengal Electoral Rule 10.

[3] *Ibid.*

for the constituency comprising the Chamber or Association of which they are such members:

Provided that no person can be so qualified unless he has a place of residence in India.

' "Chamber member" and "permanent member" include any person entitled to exercise the rights and privileges of Chamber membership or permanent membership, as the case may be, on behalf of any firm, company or other corporation registered as such member.'

The members of the Calcutta Trades Association, the life and ordinary members of the Bengal National Chamber of Commerce, the life and ordinary members of the Bengal Mahajan Sabha, and the life, ordinary and mofussil members of the Marwari Association, Calcutta, are qualified, respectively, as electors for the constituency comprising the Association, Chamber or Sabha of which they are such members: [1]

[1] Bengal Electoral Rule 8, Schedule II, Clause 13(2).

' "Member", "life-member", "ordinary member" and "mofussil member" include—

(*a*) in the case of a firm, any one partner in the firm, or if no such partner is present in Calcutta at the date fixed for the election, any one person empowered to sign for such firm, and

(*b*) in the case of a company or other corporation, any one manager, director or secretary of the company or corporation.'

We may note here the following interesting case:—

The Commissioners, appointed under Rule 36(2)(*a*) of the Bengal Electoral Rules to enquire into the petition presented by Mr. Amulyadhan Addy against the election of Mr. Byomkes Chakravarty to the Bengal Legislative Council to represent the Bengal National Chamber of Commerce constituency, held that Mr. Chakravarty's name not being on the electoral roll of the Bengal National Chamber of Commerce constituency, he was not properly nominated. They therefore declared that the election of Mr. Chakravarty was null and void and that it should be set aside. They further stated in the course of their judgment that it was the individual who could vote and who could stand for election. 'We cannot but come to the conclusion,' said they, 'that the Legislature intended that it was a natural person who should have the right to be on roll and to be entitled to vote or nominate or be a candidate. . . . Firms being artificial persons can only act through a natural person.'

In this case, the petitioner, Mr. Amulyadhan Addy, contended that Mr. Chakravarty was not entitled to be a candidate by reason of the

Provided that no person can be so qualified who has not a place of residence in India.

QUALIFICATIONS OF ELECTORS FOR THE UNITED PROVINCES LEGISLATIVE COUNCIL[1]

A person is qualified as an elector—

Qualifications based on community.

(1) for a non-Muhammadan constituency who is neither a European nor a Muhammadan,

(2) for a Muhammadan constituency who is a Muhammadan, and

(3) for the European constituency who is a European: Provided that such person possesses the further qualifications stated below for an elector of the particular constituency.

General Constituencies

Urban constituencies.

A person is qualified as an elector for an urban constituency[2] who has the necessary communal qualification and who—

(1) has a place of residence in the constituency or within two miles of its boundary, and

(*a*) is, in any place in the aforesaid area in which a house or building tax is in force, the owner or tenant of a house or building the rental value of which is not less than Rs. 36 per annum; or

fact that his name did not appear on the electoral roll, though the Bengal National Bank, Limited, of which he was a director, was on the roll. Mr. Chakravarty replied that the Bengal National Bank, Limited, was an ordinary member of the constituency known as the Bengal National Chamber of Commerce constituency and was therefore rightly registered as an elector and that he as a director of the aforesaid bank was duly qualified to be nominated and elected and returned as a member of the Bengal Legislative Council.—Bengal Election Case No. 8 of 1924. *The Calcutta Gazette*, March 26, 1924. We think that the Bengal Electoral Rule 8, Schedule II, Section 13(2) ought to be made more clear and definite.

[1] The United Provinces Legislative Council Electoral Rule 8, Schedule II.

[2] *Ibid.*

(*b*) was, in an area in the constituency in which no house or building tax is in force, assessed in the previous year to municipal tax on an income of not less than Rs. 200 per annum ; or

(*c*) is, in any area in the constituency in which neither a house or building tax nor a municipal tax based on income is in force, the owner or tenant of a house or building of which the rental value is not less than Rs. 36 per annum ; or

(*d*) has within the constituency any of the qualifications based on the holding of land, as stated below, for an elector of a rural constituency; or

(2) has a place of residence in the constituency and

(*a*) was in the previous year assessed to income-tax or

(*b*) is a retired, pensioned or discharged officer non-commissioned officer or soldier of His Majesty's regular forces.

Rural constituencies.

A person is entitled to be registered as an elector for a rural constituency[1] who has a place of residence in the constituency, and has the necessary communal qualification, and who—

(1) is, in an urban area included in the constituency in which a house or building tax is in force, the owner or tenant of a house or building, the rental value of which is not less than Rs. 36 per annum ; or

(2) was, in an urban area included in the constituency in which no house or building tax is in force, assessed in the previous year to municipal tax on an income of not less than Rs. 200 per annum ; or

(3) is, in an urban area included in the constituency where neither a house or building tax nor a municipal tax based on income is in force, the owner or tenant of a house

[1] The United Provinces Electoral Rule 8, Schedule II.

or building of which the rental value is not less than Rs. 36 per annum; or

(4) owns land in the constituency in respect of which land revenue amounting to not less than Rs. 25 per annum is payable; or

(5) owns land in the constituency free of land revenue, if the land revenue nominally assessed on such land in order to determine the amount of rates payable in respect of the same, either alone or together with any land revenue payable by him as owner in respect of other lands in the constituency, amounts to not less than Rs. 25 per annum; or

(6) being a resident in the hill pattis of Kumaon, owns a fee-simple estate or is assessed to the payment of land revenue or cesses of any amount or is a Khaikar; or

(7) being in the constituency a permanent tenure holder or a fixed-rate tenant, as defined in the Agra Tenancy Act, 1901, or an under-proprietor or occupancy tenant, as defined in the Oudh Rent Act, 1886, is liable to pay rent as such of not less than Rs. 25 per annum; or

(8) (*a*) being in the constituency a tenant as defined in the Agra Tenancy Act, 1901, or the Oudh Rent Act, 1886, other than a sub-tenant, holds land as such in respect of which rent of not less than Rs. 50 per annum or its equivalent in kind is payable, or

(*b*) in areas in the United Provinces in which the Agra Tenancy Act, 1901, or the Oudh Rent Act, 1886, is not in force, holds land as a tenant in respect of which rent of not less than Rs. 50 per annum or its equivalent in kind is payable; or

(9) was in the previous year assessed to income-tax; or

(10) is a retired, pensioned, or discharged officer, non-commissioned officer or soldier of His Majesty's regular forces.

The European constituency.

A person is qualified as an elector for the European constituency[1] who is a European, has a place of residence in the United Provinces of Agra and Oudh and has any of the qualifications required of an elector of any urban or rural constituency.

Special Constituencies[2]

The Talukdars' constituency.

A person is qualified as an elector for the Talukdars' constituency who is an ordinary member of the British Indian Association of Oudh.

Agra Landholders' constituencies.

A person is qualified to be an elector for an Agra landholders' constituency who has a place of residence in the constituency and—

(1) owns land in his personal right in the constituency in respect of which land revenue amounting to not less than Rs. 5,000 per annum is payable ; or

(2) owns land in the constituency free of land revenue, if the land revenue nominally assessed on such land in order to determine the amount of rates payable in respect of the same, either alone or together with any land revenue payable by him as owner in respect of other lands in the constituency, amounts to not less than Rs. 5,000 per annum.

Commerce and Industry constituencies.

A person is qualified as an elector—

(1) for the Upper India Chamber of Commerce constituency who—

(*a*) is a member, other than an honorary or affiliated member, of the Upper India Chamber of Commerce and has a place of business within the United Provinces of Agra and Oudh ; or

[1] The United Provinces Electoral Rule 8, Schedule II.
[2] *Ibid.*

(*b*) is entitled to exercise the rights and privileges of membership of the said Chamber on behalf of and in the name of any firm, company or other corporation which has a place of business within the United Provinces of Agra and Oudh; and

(2) for the United Provinces Chamber of Commerce constituency who—

(*a*) is a member, other than an honorary member, of the United Provinces Chamber of Commerce and has a place of business or residence in the United Provinces; or

(*b*) is entitled to exercise the rights and privileges of membership of the said Chamber on behalf and in the name of any firm, company or other corporation which has a place of business in the United Provinces.

The University constituency.

A person is qualified as an elector for the Allahabad University constituency who—

(1) resides in India and is a member of the Court, of the Executive Council or of the Academic Council of the University of Allahabad; or

(2) resides in the United Provinces of Agra and Oudh and is—

(*a*) a Doctor or Master, or

(*b*) a graduate of not less than seven years' standing in any Faculty of the University of Allahabad:

Provided that no elector is to have more than one vote in the constituency though he may have more than one of the above-mentioned qualifications.

In the case of a joint family or joint tenancy, the family or tenancy is to be regarded as the unit for deciding whether the requisite qualification exists; and if it does exist, the person qualified will be, in the case of a Hindu

joint family, the manager thereof or the member nominated in that behalf by a majority of the family, and in other cases the member nominated in that behalf by the family or tenancy concerned.[1]

A person may be qualified either in his personal capacity or in the capacity of a representative of a joint family or joint tenancy but not in both the capacities. Nor can a person be qualified as an elector as a representative of more than one joint tenancy.

[1] The United Provinces Electoral Rule 8, Schedule II, Section 2.

CHAPTER X

QUALIFICATIONS OF ELECTORS FOR THE MADRAS AND BOMBAY LEGISLATIVE COUNCILS

Electors for the Madras Legislative Council—General constituencies: non-Muhammadan constituencies (urban and rural), Muhammadan constituencies (urban and rural), Indian Christian constituencies, and European and Anglo-Indian constituencies—Special constituencies: Landholders' constituencies, the University constituency, the Planters' constituency, the Madras Chamber of Commerce and Industry constituency, and other Commerce constituencies.

Electors for the Bombay Legislative Council—General constituencies: non-Muhammadan and Muhammadan urban constituencies, non-Muhammadan and Muhammadan rural constituencies, and European constituencies—Special constituencies: Landholders' constituencies, the University constituency, and Commerce and Industry constituencies.

QUALIFICATIONS[1] OF ELECTORS FOR THE MADRAS LEGISLATIVE COUNCIL

General Constituencies

Non-Muhammadan constituencies (urban and rural).

Every person not being a European, an Anglo-Indian, an Indian Christian or a Muhammadan, is qualified to be an elector for a non-Muhammadan constituency, who resided in the constituency for not less than 120 days in the previous year, and has the further qualifications, as stated below, for an elector of the particular constituency.

Urban constituencies.

A person is qualified as an elector—

(1) for a Madras City constituency[2] who—

(*a*) was assessed in the previous year to property-tax or tax on companies or profession-tax; or

[1] Madras Legislative Council Electoral Rule 8, Schedule II.
[2] *Ibid.*

(*b*) occupied for not less than six months in the previous year a house in the city, not being a house in any military or police lines, of an annual value of not less than Rs. 60 ; or

(*c*) was assessed in the previous year to income-tax ; or

(*d*) is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular forces ; and

(2) for an urban constituency other than a Madras City constituency[1] who—

(*a*) was assessed in the previous year to an aggregate amount of not less than Rs. 3 in respect of one or more of the following taxes, namely, property-tax, tax on companies or profession-tax ; or

(*b*) has any of the qualifications in respect of the holding of land, as stated below, for an elector of a rural constituency ; or

(*c*) has any of the qualifications specified in clauses (1) (*c*) and (1) (*d*) above.

A person is qualified as an elector for a rural constituency[2] who—

Rural constituencies.

(1) is a ryotwari pattadar or an inamdar of land the annual rent value of which is not less than Rs. 10 ; or

(2) holds on a registered lease under a ryotwari pattadar or an inamdar land the annual rent value of which is not less than Rs. 10 ; or

(3) is registered jointly with the proprietor under Section 14 of the Malabar Land Registration Act, 1895, as the occupant of land the annual rent value of which is not less than Rs. 10 ; or

[1] Madras Electoral Rule 8, Schedule II. [2] *Ibid.*

(4) is a landholder holding an estate the annual rent value of which is not less than Rs. 10; or

(5) holds as ryot or as tenant under a landholder, land the annual rent value of which is not less than Rs. 10; or

(6) was in the previous year assessed in a municipality included in the constituency to an aggregate amount of not less than Rs. 3 in respect of one or more of the following taxes, namely, property-tax, tax on companies, or profession-tax; or

(7) has any of the qualifications specified in clauses (1) (*c*) and (1) (*d*) in the case of the urban constituencies above.

A person is entitled to be an elector—

Muhammadan constituencies.

(1) for a Muhammadan constituency,[1] urban or rural, who is a Muhammadan and resided in the constituency for not less than 120 days in the previous year and has any of the qualifications stated above for an elector of a Madras City, other urban, or rural constituency, as the case may be;

Indian Christian constituencies.

(2) for an Indian Christian constituency[2] who is an Indian Christian and resided in the constituency for not less than 120 days in the previous year and has any of the qualifications stated above for an elector of any urban or rural constituency included in the area of such Indian Christian constituency; and

European and Anglo-Indian constituencies.

(3) for the European constituency[3] who is a European, and for the Anglo-Indian constituency[4] who is an Anglo-Indian, if such European or Anglo-Indian resided in the Madras Presidency for not less than 120 days in the previous year and has any of the qualifications stated above for an elector of any urban or rural constituency.

[1] Madras Electoral Rule 8, Schedule II, Section 7.
[2] *Ibid.*, Section 8. [3] *Ibid.*, Section 9.
[4] *Ibid.*

The rule with regard to the joint families is practically the same as stated before in the case of the United Provinces Legislative Council.

SPECIAL CONSTITUENCIES

Landholders' constituencies.

A person is entitled to be an elector for a landholders' constituency[1] who is a Zamindar, Janmi or Malikanadar and resided in the constituency for not less than 120 days in the previous year and who—

(1) possesses an annual income of not less than Rs. 3,000 derived from an estate within the Presidency of Madras; or

(2) is registered as the Janmi of land situated within the Presidency of Madras on which the assessment is not less than Rs. 1,500; or

(3) receives from Government a malikana allowance the annual amount of which is not less than Rs. 3,000.

Joint holders of land.

If several persons are registered as joint holders[2] of land, a majority of the adult male persons so registered are to nominate in writing any one of themselves who is not disqualified to be their representative for voting purposes and the name of such representative alone will be entered in the electoral roll; but, if no such nomination is made, no entry will be made in the roll in respect of such land.

OTHER SPECIAL CONSTITUENCIES

The University constituency.

A person is qualified as an elector for the Madras University constituency[3] who has a place of residence in India and is a member of the Senate, or an Honorary Fellow, or a graduate of over seven years' standing of the University of Madras.

[1] Madras Electoral Rule 8, Schedule II, Section 14.
[2] *Ibid.*, Section 19.
[3] *Ibid.*, Section 23.

The Planters' constituency.

A person is qualified as an elector for the Madras Planters' constituency[1] who is a member of one of the associations affiliated to the United Planters' Association of Southern India.

The Madras Chamber of Commerce and Industry constituency.

A person is qualified to be an elector for the Madras Chamber of Commerce[2] constituency who is a member of the Madras Chamber of Commerce or of a Chamber affiliated to it.

Other Commerce constituencies.

The members of the Madras Trades Association, the Southern India Chamber of Commerce and the Nattukkottai Nagarathars' Association are qualified respectively as electors for the constituency comprising the Chamber or Association of which they are members.[3]

QUALIFICATIONS OF ELECTORS FOR THE BOMBAY LEGISLATIVE COUNCIL[4]

General Constituencies

Non-Muhammadan and Muhammadan urban constituencies.

Subject to the communal requirements stated hereinafter, a person is qualified as an elector for a non-Muhammadan or Muhammadan urban constituency who is not a European and who, on the first day of April preceding the date of publication of the electoral roll, had a place of residence within the constituency or, in the case of a Bombay City constituency, within the limits of the said city or within the limits of the North Salsette Mahal or the South Salsette Taluqa, or, in the case of any other urban constituency, within two miles of the boundary thereof, and who—

(1) on the first day of April aforesaid occupied, as

[1] Madras Electoral Rule 8, Schedule II, Section 24.
[2] *Ibid.*, Section 25. [3] *Ibid.*, Section 26.
[4] Bombay Legislative Council Electoral Rule 8, Schedule II.

owner or tenant, in such constituency a house, or part of a house separately occupied, as a dwelling or for the purpose of any trade, business or profession,—

(*a*) of which the annual rental value was not less than Rs. 120 in the case of a Bombay City constituency, and not less than Rs. 60 in the case of a Karachi City constituency; or

(*b*) in any other urban constituency, where any tax is based on the annual rental value of houses or buildings, of which the annual rental value was not less than Rs. 36; or if no tax so based is levied, of which the capital value was not less than Rs. 1,500; or

(2) was assessed to income-tax in the financial year preceding that in which the electoral rule is first published; or

(3) is a retired, pensioned or discharged officer, non-commissioned officer, or soldier of His Majesty's regular forces; or

(4) on the first day of January previous to the date of publication of the electoral roll, had a qualification in respect of land within the constituency, which, if held within the nearest rural constituency, would qualify him as an elector for such constituency.[1]

Non-Muhammadan and Muhammadan rural constituencies.

Subject to the communal requirements stated hereinafter, a person is entitled to be an elector for a non-Muhammadan or Muhammadan rural constituency[2] who is not a European and who, on the first day of January preceding the date of publication of the electoral roll, had a place of residence within the constituency or within a

[1] Bombay Electoral Rule 8, Schedule II, Section 2 (*d*).
[2] *Ibid.*, Section 3.

contiguous constituency of the same communal description, and who—

(1) (*a*) in the case of any constituency in Sind, on the first day of January aforesaid, held. . . land in such constituency, on which, in any one of the five revenue years preceding the publication of the electoral roll, an assessment of not less than Rs. 16 as land revenue in the Upper Sind Frontier District and of not less than Rs. 32 as land revenue elsewhere had been paid (or would have been paid, if the land had not been alienated) ; or

(*b*) in the case of any other constituency, held, on the same date, alienated or unalienated land assessed at or of the assessable value of not less than Rs. 16 as land revenue in the Panch Mahals or Ratnagiri District and not less than Rs. 32 as land revenue elsewhere ; or

(2) on the aforesaid date 'was the alienee of the right of Government to the payment of rent or land revenue, amounting to not less than Rs. 16 in the Panch Mahals or Ratnagiri or Upper Sind Frontier District and to not less than Rs. 32 elsewhere, leviable in respect of land so alienated and situate within the constituency, or was a Khot or a sharer in a Khoti village in the constituency or a sharer in a bhagdari or narvadari village in the constituency', responsible for the payment of not less than Rs. 16 as land revenue in the Panch Mahals or Ratnagiri or Upper Sind Frontier District and not less than Rs. 32 as land revenue elsewhere ; or

(3) has any of the qualifications hereinbefore specified in clauses (2) and (3) in the case of the urban constituencies ; or

(4) in any municipal district, cantonment or notified area in the constituency, on the first day of April preceding

the date of publication of the electoral roll, occupied, as owner or tenant, a house or building, or part of a house or building separately occupied, as a dwelling or for the purpose of any trade, business or profession,—

(*a*) of which the annual rental value was not less than Rs. 36 in a constituency in Sind; or

(*b*) in any other constituency, if in such municipal district, cantonment or notified area a tax is based on the annual rental value of houses or buildings, of which the annual rental value was not less than Rs. 24 in the Panch Mahals or Ratnagiri District and not less than Rs. 36 elsewhere; or if no tax so based is levied, of which the capital value was not less than Rs. 1,000 in the Panch Mahals and Ratnagiri Districts and not less than Rs. 1,500 elsewhere.

Both in the case of rural and urban constituencies no person who is not a Muhammadan is qualified as an elector for a Muhammadan constituency and no Muhammadan is qualified as an elector for a non-Muhammadan constituency.

A person is qualified as an elector—

European constituencies.

(1) for the Bombay City (European) constituency[1] who is a European and has a place of residence within the Presidency and, save in these two respects, has the qualification stated before for an elector of a Bombay City constituency; and

(2) for the Presidency (European) constituency[2] who is a European and who has a place of residence within the Presidency and, save in these two respects, has the qualification stated before for an elector of an urban other than a Bombay City constituency or of a rural constituency

[1] Bombay Electoral Rule 8, Schedule II, Section 4 (i).
[2] *Ibid*, Section 4 (ii).

according as he has a place of residence within an urban or rural constituency.

Special Constituencies

A person is qualified as an elector[1]—

Landholders' constituencies.

(1) for the constituency of the Deccan Sardars and Inamdars whose name is in the list for the time being in force under the Resolution of the Government of Bombay in the Political Department, No. 2363, dated July 23, 1867, or who, on the first day of January preceding the date of publication of the electoral roll, was the sole alienee of the right of Government to the payment of rent or land revenue in respect of an entire village situated within the constituency;

(2) for the constituency of the Guzarat Sardars and Inamdars whose name is in the list for the time being in force under the Resolution of the Government of Bombay in the Political Department, No. 6265, dated September 21, 1909, or who, on the first day of January preceding the date of publication of the electoral roll, was the sole alienee of the right of Government to the payment of rent or land revenue in respect of an entire village situated within the constituency, or was the sole holder on talukdari tenure of such a village;

(3) for the constituency of the Jagirdars and Zamindars (Sindi) who is a Jagirdar of the first or second class in Sind, or who in each of the three revenue years previous to the publication of the electoral roll paid not less than Rs. 1,000 as land revenue on land situate in any district in Sind;

[1] Bombay Electoral Rule 8, Schedule II, Section 5.

University constituency.

(4) for the Bombay University constituency[1] who, on the first day of April preceding the date of publication of the electoral roll, had a place of residence in the Bombay Presidency (excluding Aden) and was a member of the Senate or an Honorary Fellow of the University or a graduate of the University of seven years' standing ; and

Commerce and Industry constituencies.

(5) for a Commerce and Industry constituency[2] whose name is in the list of members, for the time being in force, of the association forming such constituency or who is entitled to exercise the rights and privileges of membership on behalf of and in the name of any firm or company or corporation entered in such list of members.[3]

[1] Bombay Electoral Rule 8, Schedule III, Section 6.
[2] *Ibid.*, Section 7.
[3] For the qualifications of the electors for the Bihar and Orissa, Assam, Punjab, Burma and the Central Provinces Legislative Councils, the reader is referred to the relevant Electoral Rules. We have not been able to state them in this volume for want of space.

CHAPTER XI

THE NATURE OF THE ELECTORAL SYSTEM

Complexity of the electoral system—Residential qualification—Communal representation--Representation of special interests—Restricted nature of the present franchise, one of the great defects of the Reforms.

Complexity of the electoral system.

The six preceding chapters will enable the reader to form an idea of the present electoral system in this country. One striking feature of the system is its complexity. The electoral rules and regulations in force in different parts of British India, even in respect of elections to the same legislative body, e.g., the Legislative Assembly or the Council of State, are of a bewildering variety. This, indeed, is inevitable in a country like India. As the authors of the Joint Report had recognized,[1] owing to unequal distribution of population and wealth, it was considered necessary to differentiate the qualifications for a vote not merely between provinces, but between different parts of the same province. Thus the Franchise Committee did not seek[2] to attain uniformity in the standard of property qualifications for the various provinces, and recommended differing qualifications even within the same province where it was satisfied that social and economic differences[3] justified the discrimination.

[1] *Joint Report*, para. 226.

[2] *Report of the Franchise Committee*, para. 10.

[3] See, for illustration, the electoral qualifications for the Council of State. Also note the following :—

'The Muhammadans are the poorer community, and therefore any property qualification common to them and the Hindus will make the Muhammadan electorate smaller in proportion to the Muhammadan census than will be the case with the Hindus.'—*Fifth Despatch on Indian Constitutional Reforms* (Franchises, para. 22.)

There is also a lack of uniformity in respect of qualifications for candidature. For instance, no communal qualification is required for the representation of a Muhammadan or a non-Muhammadan constituency in the Legislative Councils[1] of the United Provinces and Assam, as in the case of other provinces. Again, in some provinces[2] a residential qualification is necessary, whereas in others it is not required. It is desirable that this qualification should be dispensed with, as there is no adequate justification either for restricting the choice of electors by such a device, or for preventing a candidate from contesting a constituency in which he has no place of residence. It has been urged in favour of the residential qualification that it encourages[3] the 'candidature of persons with knowledge of local interests and actually representative of such interests, and that the chance of securing such candidates among the rural population, hitherto unversed in politics, would be impaired by the competition of candidates from outside.' Thus, 'much[4] of the educative effect of the franchise would be lost, and the representative character of the Councils impaired.' Although it may be admitted that an actual resident is likely to possess a more intimate knowledge of the needs and conditions of his constituents and to have a deeper concern in their welfare, yet the disadvantages of the restriction of choice are many and serious. Such restriction deprives the legislatures concerned of the services of men of experience and capacity residing elsewhere in the province. The absence of any residential qualification in England 'not only has the effect,' says

Residential qualification.

[1] See pages 77 and 80. See also page 74.
[2] E.g. in Bombay and in the Central Provinces and Berar. See pages 76 and 79.
[3] Report of the Franchise Committee, para 29.
[4] *Ibid.*

Dr. Garner, 'of securing the election of representatives who are free from the tyranny of petty local interests and who are likely to take broad national views of public questions, but it affords a means of bringing into and retaining in public life able statesmen who otherwise would be unable to obtain seats in Parliament. . . . In the United States, where the opposite practice prevails, the country has, as a consequence, been deprived of the services of some of its ablest and most experienced statesmen.'[1]

Another distinguished authority[2] criticises the American practice[3] of preventing a man resident in one part of a State from representing another part as follows :—

'The mischief is two-fold. Inferior men are returned, because there are many parts of the country which do not grow statesmen, where nobody, or at any rate nobody desiring to enter Congress, is to be found above a moderate level of political capacity. And men of marked ability and zeal are prevented from forcing their way in. Such men are produced chiefly in the great cities of the older States. There is not room enough there for nearly all of them, but no other doors to Congress are open. . . . As such men cannot enter from their place of residence, they do not enter at all, and the nation is deprived of the benefit of their services. Careers are moreover interrupted. A promising

[1] *Introduction to Political Science*, p. 453.

'The election of non-residents to represent constituencies to which they are to all intents and purposes strangers is an occurrence so common in England that it has come to be almost as much the rule as the exception.''—*Ibid.*, p. 452.

[2] Bryce, *The American Commonwealth*, vol. i, p. 195.

[3] 'The choice of members of Congress is locally limited by law and by custom. Under the Constitution every representative and every senator must when elected be an inhabitant of the State whence he is elected. Moreover State law has in many and custom practically in all States, established that a representative must be resident in the congressional district which elects him.'—*Ibid.*, p. 191.

politician may lose his seat in his own district through some fluctuation of opinion, or perhaps because he has offended the local wire-pullers by too much independence. Since he cannot find a seat elsewhere he is stranded; his political life is closed, while other young men inclined to independence take warning from his fate.'

It is hoped that the residential qualification will be abolished at the next revision of our electoral rules.

Communal Representation.

Another noticeable feature of our electoral system is its provision for separate representation of certain communities through communal electorates. This subject of communal representation has been one of the most vexed questions of Indian politics in recent years. On the one hand, it has been held by these communities, and particularly by the Muhammadans, that separate representation through a system of communal electorates is the only adequate safeguard against their oppression by majorities, and is the sole guarantee of their special rights and interests. On the other hand, it has been argued that any kind of communal representation tends to weaken the growing sentiment of Indian nationalism and to intensify communal differences. 'The truth is,' says a distinguished writer,[1] 'that if India is to remain a Nation, she must cleanse herself from this pernicious political disease of communal electorates. . . . No country can become prosperous or peaceful under such conditions. It enters on the downward grade, and will sink lower and lower. It loses Nationhood and splits itself into fragments, and can never play its part nor speak with authority among Nations, who have learnt that the Nation is greater than any party, class, or caste, or interest.' Again, 'India, that was growing into a Nation, is now going backwards into

[1] Annie Besant. See *Work of the Indian Legislatures* (compiled under the order of the National Conference), p. 264.

innumerable divisions; disintegration has succe... gration; the Motherland that was recovering her . hood through terrible sufferings and humiliations is . rent in pieces again by the fighting of groups, e increasing in number. As for Democracy, it has not eve. a look-in. Citizenship is unrepresented, while separate 'interests' fly at each other's throats, and every sordid motive is strengthened, while none thinks of the public interest, the interest of the country as a whole. Merit is no longer sought in public servants, but caste or creed overbears ability, and must be bribed into quietude.'[1] Such is the nature of the conflict of opinions on the question of separate representation. Before we state our own views on the question, we may say here a few words in regard to the history of communal electorates in India.

In 1906, when the question of the next stage of constitutional progress was being discussed in the country, a large and representative deputation of Muhammadans, led by His Highness the Aga Khan, waited,[2] on the 1st of October, on Lord Minto, the then Governor-General, and, among

[1] Annie Besant. See *Work of the Indian Legislatures*, p. 263.

While giving evidence before the Simon Commission, Mr. C. W. A. Turner, I. C. S., Officiating Chief Secretary to the Government of Bombay, made the following admission :—

'Communal representation to my mind has led in the past few years to a very serious fall in the efficiency of local self-governing administration and by that fall in efficiency the interests of the whole of the community must have suffered. . . . Communal representation has led to a serious fall in the standard of efficiency in the administration.'—Vide *The Statesman* of October 17, 1928 (dak edition).

According to him, communalism has even tainted the judgment of Ministers.—*Ibid.*, of October 18, 1928.

[2] 'The Muhammadans had become uneasy as to the place which they would occupy in the reforms which were under discussion in 1906. . . . The object of the deputation was to present the claims of 62,000,000 of Muhammadans to a fair share in any modified system of representation that might be contemplated, the share to be commensurate with their numbers *and political importance.*'—Sir Verney Lovett, *A History of the Indian Nationalist Movement*, p. 74

..gs, 'pressed for and obtained from him a promise ..uhammadans should elect their own members in ..ate Muhammadan constituencies.'[1] In a circular[2] ..ressed to the Local Governments in 1907, the Govern..ent of India suggested to them for their consideration certain proposals for the special representation of Muhammadans on the provincial Legislative Councils; and in a Despatch[3] addressed to the Secretary of State in 1908, it stated, among many other things, that representation by classes and interests was the only practicable method of embodying the elective principle in the constitution of the Indian Legislative Councils. It cited[4] a great array of authorities in support of this view. Lord Morley, however, was originally opposed to any scheme of special electorates for Muhammadans. In his Despatch of November 27, 1908, to the Government of India, he suggested to it for its consideration a plan[5] for the proportional representation of different communities on Indian legislative bodies through a system of indirect elections by mixed or composite electoral colleges in which Muhammadans and Hindus would pool their votes, so to say. 'The political idea at the bottom of that recommendation was that such composite action would bring the two great communities more closely together and this idea of promoting harmony was held by men of very high Indian authority and

[1] *Joint Report*, para. 75.

'Any electoral representation in India would be doomed to mischievous failure which aimed at granting a personal enfranchisement regardless of the beliefs and traditions of the communities composing the population of this continent.'—Lord Minto. Vide the Government of India's Circular, dated August 24th, 1907, para. 16, in P. Mukherji's *Indian Constitutional Documents*, vol. i, p. 266.

[2] *Ibid.*, para. 17.

[3] No. 21, dated October 1st, 1908,—P. Mukherji's *Indian Constitutional Documents*, vol. i, p. 283.

[4] See *ibid.*, pp. 283–85.

[5] *Ibid.*, p. 315 and pp. 335–36

experience who were among' his advisers at the India Office.[1] But the Muhammadans protested against any such plan, and the Government of India doubted whether it would work at all. Consequently, Lord Morley abandoned it, though he did not think that it was a bad plan.[2] As a result, in the electoral regulations framed under the Indian Councils Act, 1909, provision was made for the separate representation of Muhammadans through a system of special electorates. Thus for the first time communal representation came to be a feature of our electoral system.

The resolution adopted by the Indian National Congress and the All-India Muslim League in their sessions held at Lucknow in December, 1916, also provided for the separate representation of Muhammadans through special electorates both on the Imperial and provincial Legislative Councils.[3] It further laid down, however, that no Muhammadan should 'participate in any of the other elections to the Imperial or provincial Legislative Councils, save and except those by electorates representing special interests.[4]'

The authors of the Joint Report re-examined the question fully in the light of their new policy, and also in view of the fact that they had been pressed to extend the system of communal electorates in a variety of directions. They came to the conclusion[5] that any system of communal electorates would be a very serious hindrance to the development of democratic institutions in India. They argued that it would be opposed to the teaching of history, since the history of self-government among the nations who had developed it and spread it through the world, was decisively

[1] P. Mukherji, *Indian Constitutional Documents*, vol. i, p. 336.
[2] See *Ibid.*
[3] P. Mukherji, *Indian Constitutional Documents*, vol. i, pp. 765–770.
[4] *Ibid.*
[5] See Joint Report, paras. 227–32.

against the admission by the State of any divided allegiance; against the State's arranging its members in any way which encouraged them to think of themselves primarily as citizens of any smaller unit than itself. Secondly, they held that division by creeds and classes would mean the creation of political camps organized against each other, and teach men to think as partisans and not as citizens; and that it was difficult to see how the change from this system to national representation would ever occur. Thus class divisions would be perpetuated. Thirdly, they pointed out that existing relations between the different communities would be stereotyped. 'A minority,' they said, 'which is given special representation owing to its weak and backward state is positively encouraged to settle down into a feeling of satisfied security; it is under no inducement to educate and qualify itself to make good the ground which it has lost compared with the stronger majority. On the other hand, the latter will be tempted to feel that they have done all they need do for their weaker fellow-countrymen, and that they are free to use their power for their own purposes. The give-and-take which is the essence of political life is lacking. There is no inducement to one side to forbear, or to the other side to exert itself.'

Nevertheless they had to reckon not only with the settled existence of the system, but with a large volume of weighty opinion that no other method was feasible. And though they much regretted the necessity, they recommended that so far as the Muhammadans at all events were concerned the (then) existing system must be maintained until conditions altered, even at the price of slower progress towards the realisation of a common citizenship. But they could 'see no reason to set up communal representation for Muhammadans in any province' where they formed a majority of the voters. They also proposed, for practical reasons, to extend the communal system to the Sikhs

in the Punjab. But for the representation of other minorities in India, they preferred to rely upon nomination.

One of the authors of the Joint Report, namely, Lord Chelmsford, referred to the question again in the course of his speech at the opening of the session of the Indian Legislative Council on September 4th, 1918. He said, 'I cannot help thinking that much more has been read into our proposals than they were intended to convey. We wished indeed to make it clear that, in our opinion, communal electorates were to be deprecated for the reasons set out in our report. But it was in the main to the method of securing communal representation by communal electorates that we took exception, and not to communal representation itself. . . . I am most anxious that the fullest representation should be secured to the various classes and communities in India; but I am frankly doubtful myself whether the best method for securing that representation is through a system of separate electorates.'

The subject was next dealt with by the Franchise Committee[1] to which it had been referred; and in view of the evidence received by it from all quarters, official and unofficial, the Committee recommended separate electoral rolls and separate constituencies for the Sikhs in the Punjab and for the Muhammadans everywhere. It went a little further, as, by its terms of reference, it was free to make such recommendations as it thought right, unfettered by anything contained in the Joint Report. It recommended separate communal electorates for Indian Christians in Madras, for Anglo-Indians in Madras and Bengal, and Europeans in Madras, Bengal, Bombay, the United Provinces and Bihar and Orissa. In recommending, however, communal representation for these and other communities, the Committee expressed the hope that it would 'be possible at

[1] See paras. 15–17 of its Report.

no very distant date to merge all communities into one general electorate.'

In the Fifth Despatch to the Secretary of State on Indian Constitutional Reforms the Government of India stated that it felt the objections of principle to the communal system as strongly as the authors of the Joint Report, but that India was not prepared to take the first steps forward towards responsible Government upon any other road. Under the then existing conditions it could see no ground on which it could question the proposals of the Franchise Committee regarding communal representation, but it expressed the same hope in regard to the future of the communal system as the Committee had done before.

As a consequence of all these, provision has been made in the existing electoral rules for the separate representation of Muhammadans, Europeans, Anglo-Indians, Indian Christians, and Sikhs through communal electorates.

In conclusion, we may state that the demand for separate representation through special electorates rests, partly, on a genuine feeling of distrust and suspicion entertained by minority communities of the majority ones, and, partly, on misapprehensions aroused by interested persons who excite, by their speeches and otherwise, communal jealousies and rivalries, very often for the purpose of achieving their own selfish ends. And so long as the causes of distrust and suspicion do not disappear, so long it will be difficult to get rid of the communal system, however regrettable this may be. That an undue stress on 'communalism' tends to check the growth of the feeling of nationalism in a country, does not require any proof; but it must also be borne in mind that in human affairs, specially when the interests of a very large number of men are concerned, the majority of whom have not yet come under the enlightening influence of education, sentiment and prejudice often count for more than either reason or logic. Under a system of

communal electorates, candidates of narrower sympathies, and not very regardful of scruples, are more likely to be successful in electoral contests. As a remedy for this evil and pending the total abolition of the communal system, one experiment may be tried, as has been suggested by many, as a transitional measure, namely, the plan of joint electorates combined with the reservation of seats. Such a scheme has already been adopted in Madras in the interest of the Non-Brahmans, and also in Bombay in the interest of the Mahrattas, and it has been working fairly satisfactorily in both the provinces. A definite, but small, proportion of seats on each legislative body may be reserved for every important minority community that may demand separate representation, with the additional right to contest other seats; or, alternatively, only a proportionate number of seats on each such body may be reserved for every such community without the additional right to contest other seats. Such an arrangement will at least have the merit of doing away with communal electorates which have been, as has been shown in the foregoing pages, deprecated very strongly by many distinguished persons.

We may notice in this connexion what the Reforms Enquiry Committee (1924) stated[1] on this subject. 'It must be admitted,' it said, 'that in principle these provisions (for communal representation) are open to constitutional objection, and most of us look upon them as an obstacle to political advance, but we consider that the abolition of any system of communal electorates, and in this we include reserved seats (for the Non-Brahmans and the Mahrattas), is quite impracticable at the present time. The objections of the communities concerned are, in our opinion, far too deep-rooted to enable us to justify any recommendation in this respect. We are not prepared either to recommend

[1] See para. 69 of the Majority Report.

even the substitution, in whole or in part, of reserved seats for separate electorates.' The Report from which the above extract has been quoted was signed on December 3rd, 1924, and since then many things have happened both in India and England. We believe, that what might have been impracticable nearly four years ago, may not be so now. At any rate the experiment that has been suggested by us, may be given a fair trial. But at the same time we must say that no new scheme should be forced upon any community against its determined opposition. If any reform is to be effected, the minority communities should first be won over to the side of reformers by persuasion and by appeals to their sense of patriotism ; and they must on no account be coerced to accept any arrangement against their will. For coercion in such matters is bound to prove disastrous.

But the minority communities should also constantly keep in mind what Prof. Hearnshaw[1] has said in connexion with the general question of the representation of minorities :

' Each elector should regard himself as a microcosm of the Great Society. Parliaments should consist, not of men whose prime concern is the programme of some group or other, but of men who represent in the first instance the nation as a whole in all its varied aspects and activities '.

He then asks, ' Is there then no remedy for the " tyranny of the majority " '? His answer is :

" There is none—and there is need of none—save the purification of public opinion, the ennobling of public life, the rousing of public spirit, the education of public conscience, the development of the sense of public responsibility. What is needed is not the accentuation and perpetuation of proportional sectionalisms, not the stereotyping of

[1] *Democracy at the Crossways*, p. 334–35.

represented minorities, but the emphasising of the unity of the nation and the enlargement of the idea of patriotism. Not in futile efforts by means of subtle devices to curb and check majorities, but in the conversion of majorities to a magnanimous use of their omnipotence lies the way of deliverance.'

The motto which should be borne in mind by every community in India, should be, to quote the words of Dr. Besant[1] : 'Aim at the good of the whole, and aim also at the good of each that is consistent with the good of the whole.'

Before we close this discussion we may refer here to the recommendations of the Nehru Committee [2] on the subject of communal representation. They [3] are as follows :—

I. 'There shall be joint mixed electorates throughout India for the House of Representatives and the provincial legislatures.'

II. 'There shall be no reservation of seats for the House of Representatives except for Muslims in provinces where they are in a minority and non-Muslims in the N.-W.F. Province[4]. Such reservation will be in strict proportion to the Muslim population in every province where they are in a minority and in proportion to the non-Muslim population in N.-W.F. Province[5]. The Muslims or non-Muslims where reservation is allowed to them shall have the right to contest additional seats.'

III. 'In the provinces—

'(a) there shall be no reservation of seats for any community in the Punjab and Bengal;

[1] See *Work of the Indian Legislatures*, p. 265.

[2] This Committee was 'appointed by the All-Parties Conference in Bombay on May 19th, 1928, to consider and determine the principles of the Constitution for India.' Pandit Motilal Nehru was the Chairman of the Committee and therefore it has been so designated.

[3] See pages 123-24 of the *Report of the Nehru Committee.*

[4] I.e., North-West Frontier Province.

[5] *Ibid.*

'(*b*) in provinces other than the Punjab and Bengal there will be reservation of seats for Muslim minorities on population basis with the right to contest additional seats, (and)

'(*c*) in the N.-W. F. Province there shall be similar reservation of seats for non-Muslims with the right to contest other seats.'

IV. 'Reservation of seats where allowed shall be for a fixed period of ten years."

These recommendations are quite satisfactory, but the only question that arises in our mind, is whether they will be accepted by the different parties concerned, at the present moment. Notwithstanding Lucknow decisions[1] there is a serious difference of opinion among the leaders of the Muslim community on the question of the acceptability of the recommendations from the standpoint of Muslim interests.[2] It is earnestly hoped, however, that good sense and patriotism will assert themselves, and show to the different communities a way out of the present difficult situation.

Another feature of our electoral system is its provision for the representation of special interests like those of

[1] See *Supplementary Report of the (Nehru) Committee*, 1928, pp. 50-51.

In regard to the question of communal representation, the Lucknow Conference (August, 1928) added the following two provisos to recommendation III (a) and recommendation IV respectively of the Nehru Committee (as stated above) :—

(To III (a))

'Provided that the question of communal representation will be open for reconsideration if so desired by any community after working the recommended system for 10 years.'

(To IV)

'Provided that the question will be open for reconsideration after the expiration of that period if so desired by any community.'

The Lucknow Conference also made some recommendations in regard to Sind and Baluchistan.—*Ibid.*

[2] The Sikhs in the Punjab are also not unanimous in their support of the recommendations of the Nehru Committee on the question of communal representation.

the landed aristocracy, commerce and industry, etc. . . .

Representation of Special Interests.

Though the representation of special interests is not so bad as the representation of communities, it is certainly undemocratic in character. The principle of representation should be territorial, and not communal, religious, social, economic, or professional. The separate representation of interests has led to the introduction of the principle of plural voting into our electoral system. Under the existing electoral rules, though a person cannot vote at any general election in more than one *general* constituency, such person can vote in a number of *special* constituencies if he (or she) possesses the requisite qualifications in respect of them. Besides, such representation creates an unwholesome division of interests in the legislature. 'A system of class representation or representation of interests,' says Prof. Garner,[1] 'would tend to lower the character of the legislature, since each member would in some measure be the exclusive representative of particular interests or opinions rather than the representative of the interests of the state as a whole. A legislative assembly composed of so many elements would tend to become a debating society instead of a law-making body, and its efficiency would be diminished in proportion to the number and variety of interests represented. . . . Finally, the organization of the electorate upon the basis of class distinctions, whether economic, social, or professional, would inevitably tend to multiply artificial distinctions, divide the population into groups, array each against the others, and accentuate class antagonism generally.'[2]

[1] *Introduction to Political Science*, pp. 473–74.

[2] Another distinguished authority says—

'Though it is the aim of the representative system to secure intelligent concern for the special needs of different classes and

There is a further reason for our objection to the principle of the representation of special interests. Let us first take the case of landholders. They are, as the authors of the Joint Report[1] rightly say, 'the natural and acknowledged leaders in country areas'. Besides, 'they start with considerable advantages inasmuch as they have command both of means and position.'[2] There is no justification for their 'special representation through electorates composed of their own class,' as they are, because of their position, influence and education, mostly successful in electoral contests in *general* constituencies.[3] This is, to a very large extent, the case also with commercial or industrial magnates. One of the arguments in favour of special representation is said to be that the representatives of the land-owning or commercial or industrial interests exercise a sort of steadying influence[4] in the legislature. There may be an element of truth in this argument. But we believe that even without any special representation there will be no dearth of members in the legislature who will both exercise a steadying influence over its deliberations, and look after the special interests of commerce or industry, or of the landed aristocracy. Moreover, when the services

sections, it is hardly desirable that each representative should represent *exclusively* one set of particular interests or opinions: we want for legislators men of some breadth of view and variety of ideas, practised in comparing different claims and judgments and endeavouring to find some compromise that will harmonise them as far as possible. . . . Now it certainly seems to me that this is likely to be less the case if the community is not locally divided for electoral purposes.'—Sidgwick, *The Elements of Politics* (1908), p. 395.

[1] Para. 147.

[2] *Ibid.*

[3] Vide the oral evidences of Sir Abdur Rahim and Rao Bahadur N. K. Kelkar (Ex-Minister, Central Provinces) before the Reforms Enquiry Committee, 1924, in this connexion.—App. No. 6 to the *Report of the Reforms Enquiry Committee*, 1924.

[4] See Section 68 of the *Report of the Reforms Enquiry Committee*, 1924.

of any persons having special knowledge based upon practical experience, may be considered necessary in connection with a Bill introduced or proposed to be introduced, such persons may temporarily be nominated to the legislature concerned, and be vested, in relation to the Bill and for the period for which they may be nominated, with all the rights of members of the legislature. Provision[1] for such nomination may be made in the constitution. This will meet the particular plea for the representation of special interests, namely, the necessity of the supply of expert or technical knowledge in connexion with a proposed piece of legislation affecting them.

It should, however, be noted here that it would be difficult to abolish the representation of special interests so long as communal representation would continue to be a feature of our electoral system.

Finally, though we are opposed to the principle of the representation of special interests as undemocratic, we are in favour of the maintenance of the existing arrangement by which the interests of University education are specially represented. Our reasons are twofold : Those Universities in India which are now empowered to send representatives to the provincial Legislative Councils do not look to the interests of any particular class or community ; and, secondly, as Universities in India have to depend nowadays largely on financial support by the Government they should have their special spokesmen on the Councils.

The last feature we propose to discuss in connection with our electoral system is the restricted nature of the present franchise. This is one of the great defects of the Montagu-Chelmsford Reforms. In 1926, out of a total population of about 247 millions inhabiting British India, only

[1] There is such a provision even now in proviso (*b*) to Section 72A of the Act.

8,258,723 persons[1] were entitled to vote for elections to Governors' Legislative Councils. In the same year the total number of electors[2] for the Legislative Assembly was only 1,125,602; and that[3] for the Council of State in 1925 was only 32,126. Generally speaking, the franchise is based on a property qualification which is rather high for a poor country like India, and this is the chief reason why the number of persons who have been granted the right to vote is so small in relation to the total population of British India. The electoral rules made under the Government of India Act are responsible for this state of affairs. Under the existing electoral rules, a graduate of a University is not qualified to be an elector for the University constituency simply as a graduate. To be so qualified he must be a graduate of not less than seven years' standing. As a result, many graduates holding responsible positions are deprived of the right to vote. One fails to find any adequate justification for such restrictive rules.

In the new scheme of Reforms, now under consideration, provision should be made for such a wide extension of the franchise as to make the nearest possible approach to adult suffrage. It is not at all desirable that political authority should pass from the hands of the British bureaucracy into those of an Indian oligarchy. The extension of the suffrage is necessary for the protection of the interests of the masses in our country. As John Stuart Mill[4] has said in another connexion, all human beings

[1] See *East India* (*Constitutional Reforms—Elections*), Cmd. 2923 (1927).

In Bengal the total number of electors in 1926 was as follows :—
1,184,784 for the Provincial Council ;
224,177 for the Legislative Assembly ; and
2,393 for the Council of State.—*Ibid.*

See *ibid* also for other provinces.

[2] *East India* (*Constitutional Reforms—Elections*), Cmd. 2923 (1927).

[3] *Ibid.*

[4] *Representative Government*, ch. viii.

have the same interest in good government; the welfare of all is alike affected by it, and they have equal need of a voice in it to secure their share of its benefits.[1] Again, men, as well as women, do not need political rights in order that they may govern, but in order that they may not be misgoverned.[2] Besides, the enfranchisement of our masses will create in them a new sense of self-respect and a new consciousness of power. Moreover, it will be a potent instrument of their political education. As Mill[3] further says, among the foremost benefits of free government is that education of the intelligence and of the sentiments which is carried down to the very lowest ranks of the people when they are called to take a part in acts which directly affect the great interests of their country. It may be that, at the beginning, many voters will find themselves 'cajoled, or bought, or coerced into voting in a way' that will do themselves no good. But it will not be very long before they will realize their power and use it to their best advantage. It should be borne in mind that 'the habit of considering political issues as issues to be decided by a man's own judgment, of realizing the value of the proper use of a vote, . . . of judging candidates with regard to their fitness to represent the elector's views', and of holding

[1] He also says :—

'Every one is degraded, whether aware of it or not, when other people, without consulting him, take upon themselves unlimited power to regulate his destiny. And even in a much more improved state than the human mind has ever yet reached, it is not in nature that they who are thus disposed of should meet with as fair play as those who have a voice. Rulers and ruling classes are under a necessity of considering the interests and wishes of those who have the suffrage; but of those who are excluded, it is in their option whether they will do so or not, and, however honestly disposed, they are in general too fully occupied with things which they *must* attend to, to have much room in their thoughts for anything which they can with impunity disregard.'—*Representative Government*, ch. viii.

[2] *Representative Government*, ch. viii.

[3] *Ibid.*

representatives effectively to account,[1] can be acquired by any people by constant and increasing exercise. As Mr. Curtis[2] said, while discussing the defects of the electoral system prevailing in our country before the introduction of the Reforms, 'wisdom can only be learned in the school of responsibility. It can only be taught by leaving men to suffer by the results of the things which they themselves do; still more, by the results of the things which they leave undone.' The character of political institutions reacts,[3] even the authors of the *Joint Report* have themselves admitted, upon the character of the people and the exercise of responsibility calls forth the capacity for it. Furthermore, free institutions have the faculty of reacting on the adverse conditions in which the start has to be made.[4] As a proof of this we may say that if one witnessed, or took part in, any of the elections held during the last few years to the central, provincial or local representative bodies, one would be in a position to bear testimony to the keen interest and political wisdom displayed by our so-called illiterate and unenlightened masses. The Reforms Enquiry Committee has also observed:[5]

'The existing electorate has been characterized as illiterate and untrained, though we have received evidence to the effect that the electors are able at present to understand broad issues which is their main function and to choose the candidate who in their opinion will serve them best. . . . The percentage of electors (generally more than 40 per cent.) who voted in the contested general constituencies at the last general election (in 1923) was, we consider, having regard to all the circumstances, satisfactory, and in that respect a great advance on the first

[1] See *Joint Report*, paras 263-64.
[2] *Letters to the People of India on Responsible Government*, p. 17.
[3] See *Joint Report*, para 130.
[4] *Joint Report*, para 153.
[5] *Majority Report*, paras. 57 and 62.

general election.' At the last two general elections to the provincial legislative Councils, the percentages of votes polled to the number of electors in the contested constituencies were[1] as shown below :—

Legislative Council.	Percentage at the general election of 1923.	Percentage at the general election of 1926.
Madras ...	36·3	48·29
Bombay ...	48·2	40·55
Bengal ...	39·0	39·25
United Provinces ...	33·0	50·2
Punjab ...	49·3	51·42
Bihar & Orissa ...	52·2	60·54
Central Provinces & Berar.	57·7	61·9
Assam ...	42·1	44·17
Average of 8 provinces ...	44·725	49·54

It may also be mentioned here that the corresponding figures for the Legislative Assembly[2] were 41·9 (in 1923) and 48·07 (in 1926).

Regard being had to the fact that the Reforms had only been worked for six years, the percentages of votes

[1] *See East India* (*Constitutional Reforms—Elections*), *Cmd.* 2923 (1927).

In the second general election to the Burma Legislative Council held in 1925, the percentage in question was 16. But the case of Burma is different from the rest of British India.

[2] *Vide East India* (*Constitutional Reforms—Elections*), *Cmd.* 2923 (1927).

The provincial percentages of votes polled in 1926 to the number of electors in the contested constituencies for the Legislative Assembly were as follows :

Madras	48·44	Assam	54·25
Bombay	46·18	Burma	13·77
Bengal	42·12	Delhi	65·0
United Provinces	51·76	Ajmer-Merwara	66·42
Punjab	62·79		
Bihar and Orissa	52·57		
C. P. and Berar	75·2		

polled in 1926 to the number of electors in the contested constituencies, as pointed out above, were not very unsatisfactory. If it is argued, however, against the further extension of the suffrage that many of those who will be enfranchised either will not exercise the vote at all or will exercise it at the bidding of others, our reply will be in the words of Mill[1] uttered in another connexion—'If it be so, so let it be. If they think for themselves, great good will be done, and if they do not, no harm. It is a benefit to human beings to take off their fetters even if they do not desire to walk.'

There is one other possible argument to consider against the extension of the franchise as suggested by us. It may be urged that 'universal teaching must precede universal enfranchisement.' But we believe that in the peculiar circumstances of India it is universal franchise that will perforce lead to universal teaching. After the extension of the franchise the need will be keenly felt by all, to quote the celebrated phrase of Robert Lowe,[2] of educating 'our future masters.' Even in England the Elementary Education Act of 1870, as supplemented by the Elementary Education Acts of 1876 and 1880, which provided[3] for a compulsory national system of elementary education, had been preceded by the extension of the suffrage under the Reform Acts of 1832 and 1867. And it was only after the further extension of the franchise there under the Representation of the People Act, 1884, that elementary education, already rendered compulsory, became free[4] under the Elementary Education Act of 1891.

[1] *Representative Government*, ch. viii.

[2] Sidney Low and Sanders, *The Political History of England*, vol. xii, p. 207.

[3] Henry Craik, *The State in its Relation to Education*, chs. v–vii; also Ransome, *History of England*, pp. 1010–1011.

[4] Sidney Low and Sanders, *The Political History of England*, vol. xii, p. 414.

For three years from 1910 the late Mr. Gopal Krishna Gokhale had fought[1] hard, though in vain, for the introduction of free and compulsory elementary education into our country ; and what has been the result ? 'In 1921,' according to an official report,[2] 'out of a total population of 247 millions in British India, only 22·6 millions were literate,' and in 1926–27 only '7·8 million pupils, or 21·03 per cent. of the population of school-going age, were undergoing primary education.' 'It must be evident,' says the same official report, 'that the amount of literacy among the common people is practically negligible.' And this fact will be used as an argument against any wide extension of the franchise.[3] We have no doubt that once the suffrage is extended as suggested by us, the process of universalization of education will be accelerated, and before long 'the greatest weakness of the present educational situation,' namely, 'the widespread illiteracy of the masses,' will be removed. Otherwise, we shall have to wait for decades to achieve the same object.

Apart from what we have said above, there is another aspect of the question to be considered. Literacy should not be regarded as the only test of the political intelligence or capacity of a people ; and we fully agree with the Nehru Committee[4] when it says that 'political experience can only be acquired by an active participation in political institutions and does not entirely depend upon literacy'. We may further add that during the last fifteen years there have occurred many events in India and abroad which have awakened the political consciousness of our masses to an extraordinary degree.

[1] *Vide Speeches of Gokhale*, 3rd ed., Natesan & Co., Madras.
[2] *India in 1926–27* by J. Coatman, ch. viii.
[3] See in this connexion pp. 93–94 of the Report of the Nehru Committee.
[4] See *Ibid.*

In concluding this subject we may say that if a choice is to be made between the further continuation of communal electorates with all their attendant evils and the introduction of adult suffrage into our country at this stage, we should prefer the latter to the former. This may necessitate, just at the outset, a differential treatment of certain backward tracts in our country. If it be so, there should be no legitimate objection to it. Even now some parts of British India are differently treated from the rest of the country under section 52A (2) of the Act.

CHAPTER XII

ELECTORAL PROCEDURE AND MEMBERSHIP[1]

Notification for elections—Nomination of candidates—Deposit on nomination—Death of a candidate before poll—Procedure at election—Regulations regarding the conduct of elections—The Returning Officer and the Presiding Officer—Multiple elections—The taking of oath—Vacation of seat—Election Agents—Return of election expenses—Maximum scale of election expenses—Accounts of Agents.

Election offences—Bribery—Treating—Undue influence—Personation—Publication of false statements—Unauthorized expenditure—Other minor corrupt practices—Hiring and using of public conveyances—Hiring of liquor shops, etc.—The election petition and election court—Contents of petition—Deposit of security—Withdrawal of petition—Grounds for declaring election void—Report of Election Commissioners and procedure thereon—Other consequences of more serious election offences—Corrupt practices at the last two elections.

Notification for elections.

All elections, whether general elections on the expiration of the duration of a legislative body or on its dissolution, or by-elections for filling casual vacancies, are held in pursuance of notifications by the Government in the Gazette.[2] In these notifications the Governor-General, in the case of elections to either Chamber of the Indian Legislature, or the Governor, in the case of elections to a Legislative Council, calls upon the constituencies concerned to elect members in accordance with the Electoral Rules, within such time as may be prescribed by the notifications. It is provided,

[1] Electoral Rules, Parts IV, VI and VII. These rules are common to all legislative bodies in India and are identically numbered.

[2] Electoral Rule 27.

The Gazette here means the *Gazette of India* or a provincial Gazette, as the case may be.

however, that if the Governor-General or the Governor, as the case may be, thinks fit, such notifications may also be issued at any time not being more than three months before the date on which the duration of a legislative body will expire in the ordinary course of events.

Nomination of candidates.

Any person may be nominated as a candidate for election in any constituency for which he is eligible for election.[1]

The local Government of each province appoints for each constituency (*a*) a date, within fourteen days after the date of the notification calling upon the constituency to elect a member, for the nomination of candidates; (*b*) another date, within seven days after the first-mentioned date, for the 'scrutiny of nominations'; and (*c*) a further date or dates for the taking of a poll, if necessary.[2]

On or before the date appointed for the nomination of candidates, each candidate must,[3] either personally or by his proposer and seconder together, deliver to the Returning Officer or to some other authorized person a duly filled-in nomination paper[4] subscribed by the candidate himself[5] as signifying his assent to the nomination and by the proposer and seconder who must be registered electors of the constituency. All nomination papers must be delivered between 11 a.m. and 3 p.m. and any such paper which is not delivered before 3 p.m. on the day appointed for the

[1] Electoral Rule 11 (1).
[2] *Ibid.*, 11 (2).
[3] *Ibid.*, 11 (3).
[4] A copy of the form of nomination paper is given on pp. 189–90 of this book. Nomination papers are supplied by the Returning Officer 'to any elector who may apply for the same on the proper date.'—Hammond, *The Indian Candidate and the Returning Officer*, p. 100.
[5] 'The nomination paper must bear the candidate's signature, which may cause difficulty if the prospective candidate is out of India. This can be met by the candidate leaving behind him before he goes two or three signed nomination papers.'—*Ibid.*, p. 39.

nomination of candidates will be rejected.[1] Every nomination paper to be delivered must be accompanied by a written declaration by the candidate to the effect that he has already appointed or does thereby appoint as his election agent for the election either himself or some one other person who is eligible for such appointment and who must be named in the declaration ; unless this is done, the nomination of a candidate is not complete.[2] The Returning Officer or any other authorized person must, on receiving a nomination paper, inform the person or persons delivering the same of the date, hour and place appointed for the scrutiny of nominations.[3] He must, besides, put up in some conspicuous place in his office a notice of the nomination, containing descriptions both of the candidate and of the persons who have signed the nomination paper as proposer and seconder.

A candidate may withdraw his candidature by giving notice by 3 p.m. on the day following that appointed for the scrutiny of nominations. He will not be allowed, if he has once withdrawn his candidature, to cancel the withdrawal or to be renominated as a candidate for the same election.[4]

Deposit on nomination.

On or before the date appointed for the nomination, each candidate must deposit or cause to be deposited with the Returning Officer the sum of five hundred rupees or two hundred and fifty rupees, ' in cash or in Government promissory notes of equal value at the market rate of the day ', according as he is a candidate for either Chamber of the Indian Legislature or for a Governor's Legislative Council. No nomination will be valid unless such deposit has been made.[5]

[1] Electoral Rule 11 (3) and (6).
[2] *Ibid.*, 11 (5).
[3] *Ibid.*, 11 (7).
[4] *Ibid.*, 11 (8).
[5] *Ibid.*, 12 (1). In England a candidate must deposit or cause to be

If a candidate withdraws his candidature within the prescribed time or if his nomination is refused, the deposit will be returned to the person by whom it was made ; and, if any candidate dies after the deposit is made and before the poll is commenced, the deposit, if made by him, will be returned to his legal representative, or, if not made by him, will be returned to the person by whom it was made.[1] The deposit will be forfeited to the Government if a candidate is not elected and if the number of votes obtained by him does not exceed, in the case of a constituency returning one or two members, one-eighth of the total number of votes polled or, in the case of a constituency returning more than two members, one-eighth of the number of votes polled, divided by the number of members to be elected.[2] The number of votes polled is determined, in the case of an election by the ordinary method, by counting the number of ballot-papers other than the spoilt ones and, in the case of an election according to the system of proportional representation by means of the single transferable vote, by counting the first preferences in favour of a candidate.[3]

Again, if the seat of an elected candidate is declared vacant on account of his failure to take the necessary oath of allegiance to the Crown, his deposit money will be forfeited to the Government.[4] The deposit will be returned, if a candidate is not elected but has secured more than one-eighth of the total votes polled or, as the case may be, one-eighth of the total votes polled, divided by the number of members to be elected. It will also be refunded to the candidate who has been elected and who has taken the necessary oath of allegiance.[5]

deposited with the Returning Officer the sum of £150 ; otherwise his candidature will be deemed to be withdrawn.

[1] Electoral Rule 12 (2).
[2] *Ibid.*, 12 (3). The English law on this point is identical.
[3] *Ibid.*, 12 (4).
[4] *Ibid.*, 12 (5).
[5] *Ibid.*, 12 (6).

If, however, a candidate has been duly nominated at a general election in more than one constituency, only one of the deposits made by him or on his behalf will be returned, and the remainder will be forfeited to the Government.[1]

Death of a candidate before poll.

If a duly nominated candidate dies before the poll, the Returning Officer, or any other authorized person, will have, on being satisfied of the fact of the death, to countermand the poll and all proceedings connected with the particular election have to be commenced anew; but no fresh nomination is necessary in the case of a candidate whose nomination remained valid at the time of the countermanding of the poll.[2]

Procedure at election.

If the number of candidates who have been duly nominated and who have not withdrawn their candidature, is greater than the number of vacancies, a poll will be taken. If, however, the number of such candidates is equal to the number of vacancies, all the candidates will be declared to be elected. If, on the other hand, the number of such candidates is less than the number of vacancies, all the candidates will be declared to be elected, and the Governor-General or the Governor, as the case may be, will call upon the constituency concerned to elect a person (or persons) for filling the remaining vacancy (or vacancies) within a certain time appointed by him.[3] But, if in the last case the constituency fails to elect a person (or persons) for filling the vacancy (or vacancies) within the prescribed time, the Governor-General or the Governor, as the case may be, is not bound to call upon it again to elect any person (or persons) until such time, if any, as he thinks fit.[4]

[1] Proviso to Electoral Rule 12 (6).
[2] Electoral Rule 13.
[3] *Ibid.*, 14 (3).
[4] Proviso to Electoral Rule 14 (3).

Votes are given by ballot, and in general constituencies in person; but the Governor-General in Council[1] or the local Government of a province, as the case may be, may direct in certain special cases[2] that votes may be given otherwise than in person. Voting by proxy is allowed in no circumstances.[3]

In 'plural-member' constituencies each elector has as many votes as there are members to be elected, but he cannot give more than one vote to any one candidate.[4] Votes are counted by, or under the supervision of, the Returning Officer, and each candidate, his election

[1] This applies only in the case of elections to the Legislative Assembly. The relevant Rule in the case of elections to the Council of State is as follows:—'Votes shall be given by ballot, and no votes shall be received by proxy.'—The Council of State Electoral Rule 14 (4).

[2] Viz., (*a*) 'In the case of any specified general constituency or of any specified part of any general constituency, or

(*b*) in respect of any person attending at a polling station in any constituency under the orders of, or under authority from, the Returning Officer of such constituency.'—Electoral Rule 14 (4).

[3] Electoral Rule 14 (4).

[4] *Ibid.*, 14 (5).

This is the ordinary Rule, but there are exceptions as follows:—

(1) In the case of elections to the Bombay Legislative Council, an elector is entitled to cumulate all his votes upon one candidate or to distribute them among the candidates as he pleases.

(2) In the case of elections to the Legislative Assembly, an elector in the Presidency of Bombay, and, in the case of election to the Council of State, an elector of the Bombay non-Muhammadan constituency may cumulate all his votes upon one candidate or distribute them among the candidates as he pleases.

(3) Elections must be conducted according to the principle of proportional representation by means of the single transferable vote in the case of—

(*a*) the Madras non-Muhammadan constituency for the Council of State;

(*b*) the Bengal European constituency for the Legislative Assembly; and

(*c*) the Presidency and Burdwan (European) constituency for the Bengal Legislative Council.

In the last cases (3) votes are given in accordance with regulations made in that behalf by the Governor-General in Council or the Bengal Government, as the case may be.

agent and his authorized representative have a right to be present at the time of counting.[1]

As soon as the counting of votes is completed, the Returning Officer declares the candidate or the candidates, as the case may be, to whom the largest number of votes has been given, to be elected.[2] The rule in the case of a tie is rather interesting. If an equality of votes exists between candidates and the addition of one vote entitles any of the candidates to be elected, the determination of the person or persons to whom such an additional vote is deemed to have been given is made by lot in the presence of the Returning Officer and in such manner as he directs.[3] The Returning Officer reports without delay the result of the election to the Secretary to the provincial Legislative Council or to the Secretary to the Government of India in the Legislative Department, as the case may be. The name or or names of the successful candidate or candidates are then published in the Gazette.[4]

Regulations regarding the conduct of elections.

The local Government of each province has been empowered to make regulations[5] providing—

(1) for the scrutiny of nominations, for the manner in which such scrutiny is to be conducted and the circumstances in which any person may be present or may enter objections;

(2) for the appointment in each constituency of a Returning Officer and for his powers and duties, and for the performance by other persons of any power or duty of the Returning Officer;

(3) in the case of general constituencies, for the

[1] Electoral Rule 14 (6).
[2] *Ibid.*, 14 (7).
[3] *Ibid.*, 14 (8).
[4] *Ibid.*, 14 (9).
[5] Electoral Rule 15. Unlike the Electoral Rules, these provincial regulations vary from province to province except in respect of essential matters.
For the Bengal Regulations see *The Bengal Legislative Council Manual*, 1927.

division of the constituencies into polling areas for the convenience of electors, and for the creation of polling stations for these areas;

(4) for the appointment of officers to preside at polling stations, and for the duties of such officers;

(5) for the checking of voters by reference to the electoral roll;

(6) for the manner in which votes are to be given and, in particular, for the case of illiterate voter or voters under physical or other disability;

(7) for the procedure to be followed when persons represent themselves to be electors after other persons have voted as such electors;

(8) for the scrutiny of votes;

(9) for the safe custody of ballot papers and other election papers and for the inspection and production of such papers; and

(10) for such other purposes connected with the conduct of elections as it thinks necessary.

These regulations must not be in any way inconsistent with any Electoral Rule. They apply not only to the local Legislative Council, but, so far as the particular province is concerned, to either Chamber of the Indian Legislature as well, unless the Governor-General in Council gives different directions[1] regarding their application to the latter case. Similar regulations in force in the Punjab will, as far as they are applicable, be in force in the province of Delhi; and similar regulations in force in the United Provinces will, as far as they are applicable, be in force in the province of Ajmer-Merwara.

In the preceding pages we have stated in a way the functions of the Returning Officer in the conduct and management of an election. He is, to quote a writer, 'the

[1] See Note B on page 191 in this connexion.

pivot on which the election revolves from the date of the nomination to the declaration of the result.'[1]

The Returning Officer and the Presiding Officer.

He receives nomination papers, examines them and decides all objections which may be made to any nomination paper. He may accept a nomination or refuse it, as the Electoral Rules may seem to him to warrant in the circumstances of the case. This is one of his most important functions in connection with an election. He must satisfy himself that a candidate is not ineligible on any ground.[2] An error of judgment on his part at this stage can only be rectified by an election petition later, entailing unnecessary trouble and expenditure. He must endorse on each nomination paper his decision accepting or rejecting the same. Votes are counted by him or under his supervision. He declares the result of an election and reports it to the proper authorities. In some provinces it is he who selects for each constituency as many polling stations as he thinks necessary and appoints a Presiding Officer for each polling station and Polling Officers to assist the latter.[3]

The Presiding Officer must maintain order at the polling station, see that the election is fairly conducted, regulate the number of electors to be admitted at one time, and exclude all other persons except the Polling Officers to assist him, the candidates, one agent of each candidate, the police or other public servants on duty, and such persons

[1] *Indian Election Guide* (*The Statesman* Press) by I. C. S., p. 25. Hammond also says—

'The Returning Officer is the person mainly responsible for the conduct of the actual election. It is to him that candidates and election agents should look for instructions and advice; it is before him that objections can be lodged as to the validity of votes, or complaints as to personation and undue influence or other corrupt practices.'—*The Indian Candidate and Returning Officer*, p. 107. The functions of the Returning Officer have been well discussed in this book.

[2] *Ibid.*, p. 101.

[3] E.g., in Bengal and Bihar and Orissa.

as may be admitted for the purpose of identifying the electors.

When a person presents himself to vote, the Presiding Officer has the right to, and must, if so required by a candidate or his agent, put questions to him regarding his identity or his right to vote.

As soon as possible after the close of the poll, the Presiding Officer of each polling station must, in the presence of the candidates or their polling agents, seal with his own seal and the seal of such candidates or agents as may desire to affix their seal, each ballot box used at the station and the packets of unused, 'spoilt' or 'tendered ballot papers' and send them all, generally,[1] to the Returning Officer, with a statement showing the number of ballot papers entrusted to him and accounting for them under the heads of 'ballot papers in the ballot box,' 'unused,' 'spoilt' and 'tendered ballot papers,'[2] etc.

Multiple elections.

If any person is elected by a constituency of a Governor's Legislative Council as well as by a constituency of either Chamber of the Indian Legislature, the election of such person to the Governor's Legislative Council will be void and the Governor will call upon the constituency concerned to elect another person.[3]

If a person is elected by more than one constituency either in the same province or in different provinces, he will have to choose within seven days of the publication of the result of the later or the latest of such elections, according as he has been elected by two or more than two constituencies, for which of these constituencies he will serve and then inform the relevant authorities of his choice which must be final.[4] When any such choice has been made, the

[1] In some provinces they are sent to such person or place as the District Collector directs.
[2] See Note A on pp. 190–91.
[3] Electoral Rule 16.
[4] *Ibid.*

Governor-General or the Governor, as the case may be, will call upon the constituency or the constituencies for which he has not chosen to serve, to elect another person or persons in his place. If, however, he fails to make the required choice within the seven days, his election will be void and the Governor-General or the Governor, as the case may be, will call upon the constituency or the constituencies concerned to elect another person or persons.[1]

The taking of oath.

Every person who is elected or nominated to be a member of a legislative body must, before taking his seat, make, at a meeting of the legislative body, an oath or affirmation of his allegiance to the Crown as follows [2] :—

'I, A.B., having been $\frac{\text{elected}}{\text{nominated}}$ a member of this body (i.e. Council or Assembly) do solemnly swear (or affirm) that I will be faithful and bear true allegiance to His Majesty the King-Emperor of India, his heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter.'

Vacation of seat.

If any person having been elected or nominated (i) subsequently becomes subject to any of the disabilities under the Electoral Rules, which disqualify a person for membership of any legislative body, or (ii) fails to 'make the oath or affirmation,' as described in the previous paragraph, within such time as the Governor-General or the Governor considers reasonable, the Governor-General or the Governor, as the case may be, must, unless the disqualification has been removed[3] in his favour, declare his seat to be vacant.[4]

An official is not qualified for election as a member of either Chamber of the Indian Legislature or of a local Legislative Council; and if any non-official member of

[1] Electoral Rule 16. [2] *Ibid.*, 24.
[3] Possible only in the first case. [4] *Ibid.*, 25.

either Chamber of the Indian Legislature or of a local Legislative Council, whether elected or nominated, accepts any office in the service of the Crown in India, his seat on the Chamber or on the Council, as the case may be, becomes vacant. But a Minister is not to be deemed an official and a person will not be deemed to accept office on appointment as a Minister.[1] 'There is no rule,' says Mr. Hammond, 'requiring a Minister to resign office before offering himself as a candidate for re-election, and in the *Habiganj South* case the (Election) Commissioners held the opinion that the Minister committed no irregularity in choosing to remain in office while conducting his election campaign.'[2]

A nominated or elected member [3] of either Chamber of the Indian Legislature or of a local Legislative Council may resign his office to the Governor-General or to the Governor,[4] as the case may be, and on the acceptance of the resignation the office will become vacant. And if for a period of two consecutive months any such member is absent from India or unable to attend to the duties of his office, the Governor-General or the Governor,[5] as the case may be, may declare, by notification published in the Gazette, that the seat in Council of that member has become vacant.[6]

If an elected member of one Chamber of the Indian Legislature becomes a member of the other Chamber, he will cease to be a member of the first-mentioned Chamber.[7]

If, however, any person is elected a member of both Chambers of the Indian Legislature, he will, before taking

[1] Sections 63E (1) and 80B of the Act.
[2] *The Indian Candidate and Returning Officer*, Addenda and Corrigenda.
[3] Section 93 (1) of the Act.
[4] Or to the Lieutenant-Governor or Chief Commissioner in the case of a Lieutenant-Governorship or Chief Commissionership.
[5] Or the Lieutenant-Governor or Chief Commissioner.
[6] Section 93 (2) of the Act.
[7] Section 63E (2) of the Act.

his seat in either Chamber, have to signify in writing the Chamber of which he wishes to be a member, and thereupon his seat in the other Chamber will become vacant.[1]

Election Agents.

We have stated before that every candidate must appoint, as his election agent, either himself or some one else who is not disqualified for such appointment under the Electoral Rules.[2] The necessity for selecting the right person for this office cannot be too strongly emphasized. 'The class of persons selected for this duty', says President Lowell in another connexion, 'is not only a matter of great importance to the candidate, but upon it depends also in large measure the purity of elections.'[3] The candidate may cancel the appointment of his election agent; but, if he does so, he must inform the officer receiving nominations of this fact. In the event of such a cancellation or of the death of his agent, the candidate must immediately appoint another election agent and declare his name in writing to the said officer.[4]

Return of election expenses.

In order to prevent extravagance and to minimize the possibility of corrupt practices at elections, stringent rules have been framed regarding expenses to be incurred in connection with an election. These rules have prescribed the objects of election expenses and also provided for the fixation of their maximum scales at different elections. Within thirty-five days of the publication of the result of an election, there must be submitted to the Returning Officer in respect of each candidate for election a return,

[1] Section 63E (3) of the Act.

[2] *Vide* Sub-rules (3) and (4) of Electoral Rule 5 and also Electoral Rule 17. The disqualification referred to, may arise from the commission of a corrupt practice or from the failure to lodge a prescribed return of election expenses, or from having lodged return which is found to be false in any material particular.

[3] *The Government of England*, vol. i, p. 229.

[4] Electoral Rule 18.

n a prescribed form, of his election expenses.[1] Every such return, which must be signed both by the candidate and his election agent, must contain a statement of all payments made by the candidate or his election agent or by any person acting on his behalf, for expenses incurred on account of the conduct and management of the election, and a further statement of all unpaid claims in respect of such expenses of which he or his election agent has knowledge.[2]

Schedule IV to the Electoral Rules enumerates the objects for which expenses may be legally incurred. Briefly speaking, they are as follows :—

(1) the personal expenditure of the candidate incurred or paid by him or his election agent in connection with his candidature ;

(2) the total amount of the pay of each person employed as an agent, clerk or messenger ;

(3) the travelling expenses and any other expenses on account of agents, clerks, messengers and other persons, whether in receipt of salary or not ;

(4) the cost whether paid or incurred of—

(*a*) printing, (*b*) advertising, (*c*) stationery, (*d*) postage, (*e*) telegrams and (*f*) rooms hired either for public meetings or as Committee rooms ; and

(5) any other miscellaneous expenses.

The return must be accompanied by declarations [3] both by the candidate and his election agent, in which they must solemnly affirm before a Magistrate that, to the best of their knowledge and belief, the statement of election expenses contained in the return is true, and that no other expenses whatsoever have, to their knowledge or belief, been incurred in connexion with the candidature.[4] If a candidate

[1] Electoral Rule 19 (1).
[2] *Ibid.*, 19 (2).
[3] *Ibid.*, 19 (3).
[4] *Ibid.*, 19 (3), Schedule IV.

is, on account of his absence from India, unable to sign the return of election expenses and to make the required declaration within the prescribed time, it must be signed and submitted by his election agent only, who will have to make a declaration as stated above ; but within fourteen days of his return to India, the candidate must himself make, in a special form, a declaration on oath before a Magistrate regarding his election expenses.[1]

As soon as possible after a return has been submitted and the necessary declarations in respect thereof have been made, the Returning Officer must put up in some conspicuous place in his office, and also publish in the local Gazette, a notice of the date on which the return along with the declarations has been submitted, and of the time and place at which they can be inspected. Any person is, on payment of a fee of one rupee, entitled to inspect any such return or declarations and, on payment of such fee as the local Government may prescribe, to obtain a copy or copies thereof or of any part thereof.[2]

Maximum scale of election expenses.

The Governor-General in Council may fix maximum scales of election expenses and prescribe the number and descriptions of persons who may be lawfully employed for payment in connection with any election held under the Electoral Rules.[3]

Accounts of agents.

Every election agent must, for each election for which he is appointed an agent, keep separate and regular books of account in which the particulars of all expenditure in connection with the election must be entered.[4]

Rules have been framed under the Government of India Act for the final decision of doubts and disputes as to the validity of an election.[5] They have been supplemented

[1] Electoral Rule 19 (4).
[2] *Ibid.*, 19 (5).
[3] *Ibid.*, 20 (1) and (2).
[4] *Ibid.*, 21.
[5] Electoral Rules, Part VII.

by a special legislation[1] providing for the criminal punishment of certain acts which directly or indirectly interfere with the purity of elections, thus bringing election offences within the purview of the general law of the land. These acts are known as malpractices in connection with elections. They are bribery, treating, undue influence or personation at an election, false statements or illegal payments in connection with an election, and the failure to keep election accounts. A candidate found guilty of a grave malpractice in connection with an election may not only lose his seat in the legislature and be deprived of his electoral rights for five years, but may also be criminally punished.

Election offences.

Bribery at elections consists in[2] 'a gift, offer or promise by a candidate or his agent, or by any other person with the connivance of a candidate or his agent, of any gratifications (including all forms of entertainment and all forms of employment for reward) to any person whomsoever with the object of inducing directly or indirectly—

Bribery.

(1) a person to stand or not to stand as, or to withdraw from being, a candidate, or

(2) an elector to vote or refrain from voting at an election,

or as a reward to

(1) a person for having so stood or not stood or for having withdrawn his candidature, or

(2) an elector for having voted or refrained from voting.'

The acceptance by a person of any gratification either for himself or for any other person as a reward for exercising any electoral right or for inducing or attempting to

[1] *Vide* The Indian Elections Offences and Inquiries Act, 1920 : Act No. 39 of 1920.

[2] Schedule V to Electoral Rules, Part I, Clause 1.

induce any other person to exercise any such right also constitutes the offence of bribery.[1]

Treating. Treating is a form of bribery. It means 'the incurring in whole or in part by any person of the expense of giving or providing any food, drink, entertainment or provision to any person with the object of directly or indirectly inducing him or any other person to vote or refrain from voting or as a reward for having voted or refrained from voting.'[2] In the words of President Lowell, the person who treats relies upon the voter's general sense of gratitude.

It may be noted here that a declaration of public policy or a promise of public action by a candidate does not constitute an offence.[3]

Undue influence. Undue influence is defined as any direct or indirect interference or attempt at interference on the part of a candidate or his agent or of any other person with the connivance of the candidate or his agent with the free exercise of one's electoral right.

It includes (1) threatening a candidate or a voter or any other person in whom the candidate or the voter is interested with injury of any kind; and (2) inducing or attempting to induce a candidate or a voter to believe that he or any person in whom he is interested will become or will be rendered an object of divine displeasure or spiritual censure.[4] If an employer threatens his employees with dismissal in the event of their not exercising their electoral rights according to his direction, or if a minister of religion or a priest holds out threats of excommunication or other religious disabilities in order to influence the exercise of

[1] Section 171B (ii) of the Indian Penal Code, chapter IX-A.

[2] Electoral Rule 44 (2), *Explanation*. '"Treating" means that form of bribery where the gratification consists in food, drink, entertainment, or provision.'—Act No. 39 of 1920.

[3] Electoral Rules, Schedule V, Part I, Clause 2 (2).

[4] *Ibid.*, Clause 2 (1).

electoral rights by any person, the offence of undue influence is committed thereby.

Personation.

If any person at an election applies for a voting paper, or votes, in the name of any other person, whether living or dead, or in a fictitious name, or if he having voted once at such election applies at the same election for a voting paper in his own name, or if he abets, procures or attempts to procure the voting by any person in any such way, he commits the offence of personation at an election.[1]

Publication of false statements.

The publication of false statements in relation to the personal character or conduct of any candidate, or in relation to his candidature or withdrawal thereof, calculated to prejudice the prospects of his election, is a criminal offence.[2]

Unauthorized expenditure.

An unauthorized expenditure by any person in any way whatsoever for the purpose of promoting or procuring the election of a candidate, or the failure to keep accounts of expenses incurred in connection with an election, comes also within the scope of election offences.[3]

The offences of bribery, undue influence and personation are punishable with imprisonment of either description[4] for a term which may extend to one year, or with fine, or with both; and treating, the publication of false statements, or unauthorised expenditure in connection with an election, and the failure to keep election accounts are punishable with fine only. All these offences, however, are further punishable with the loss of electoral rights for a period varying from three to five years.

Other corrupt practices[5], punishable simply with the loss

[1] Section 171D of the Indian Penal Code.
[2] Electoral Rules, Schedule V, Part I, Clause 4.
[3] Sections 171H and 171 I of the Indian Penal Code.
[4] I. e., simple or rigorous.
[5] *Vide* Electoral Rules, Schedule V, Parts I and II.

of electoral rights for a period varying from three to five years, are—

Other minor corrupt practices.

(1) the expenditure on the employment of any person in connection with an election in excess of the number prescribed therefor by the Governor-General in Council ;

(2) the payment on account of the conveyance of any elector to or from any place for the purpose of recording his vote ;

Hiring and using of public conveyance.

(3) the hiring, borrowing or using for certain purposes in connection with an election of any boat, vehicle or animal usually kept for letting on hire or for the conveyance of passengers by hire[1];

Hiring of liquor shops.

(4) the hiring of liquor shops for the purpose of meetings to which electors are admitted, or as committee rooms ;

Issue of circulars without printer's and publisher's name thereon.

(5) the issuing of a circular, placard, or poster having reference to an election, which does not contain the name and address of its printer and publisher.

The election petition and election court.

The validity of an election, when disputed, is decided by a specially appointed election tribunal. The procedure is as follows: When an election petition, by which alone an election can be called in question,[2] is duly presented by a candidate or an elector, or by a specially empowered officer of the Government, the Governor-General or the Governor, as the case may be, must appoint [3] as

[1] The hiring of a boat, etc., by an elector for his own conveyance to or from the place where the vote is recorded, is not an offence.

[2] Electoral Rule 31.

[3] *Ibid.*, 36 (2) (*a*).

By the Parliamentary Elections Act, 1868, the Parliamentary Elections and Corrupt Practices Act, 1879, and the Supreme Court of Judicature Act, 1881, the trial of election petition in England is now

Commissioners for the trial of the petition three persons who are or have been, or are eligible to be appointed, Judges of a High Court, and must appoint one of them to be the President, and thereafter the usual course of judicial proceedings will follow.

Contents of the petition.

The petition must contain a brief statement of the material facts on which the petitioner relies and be accompanied by a list, duly signed and verified, setting forth full particulars of any corrupt practice which he alleges.[1] He may, if he likes, besides calling in question the election of the returned candidate, claim a declaration that he himself or any other candidate has been elected.[2] At the time of the presentation of the petition, the petitioner, unless he happens to be the specially empowered Government Officer, must deposit with it the sum of Rs. 1,000 in cash or in Government Promissory Notes of equal value as security for the costs of the same.[3]

Deposit of security.

Withdrawal of petition.

An election petition may be withdrawn only with the permission of the Commissioners or, if an application for withdrawal is submitted before any Commissioner has been appointed, of the Governor-General or the Governor, as the case may be.[4] But no application for withdrawal will be granted if, in the opinion of the Governor-General or the Governor or of the

committed to a tribunal of two judges of the King's Bench Division of the High Court of Justice, selected by the other judges of that division. (See Lowell, *The Government of England*, vol. i, p. 230, or E. May's *Parliamentary Practice*, p. 581). The Electoral Rule 36 (2) (*a*) under the Government of India Act, relating to the constitution of election courts, should be so amended as to provide for the trial of controverted elections only by (2 or 3) judges of an Indian High Court selected by the other judges of the Court. Many of the election courts, set up under the existing Rule since the first elections under the Reforms, have not been able to inspire public confidence in their impartiality on account of their composition.

[1] Electoral Rule 33 (1) and (2). [2] *Ibid.*, 34.
[3] *Ibid.*, 35. [4] *Ibid.*, 39(1).

Commissioners, as the case may be, such application has been induced by any illegal bargain or consideration.[1]

If in the opinion of the Commissioners—

Grounds for declaring election void.

(1) the election of a returned candidate has been procured or induced, or the result of the election has been materially influenced, by a corrupt practice, or

(2) any of the offences like bribery, undue influence, personation, publication of false statements and authorization of certain illegal expenses has been committed, or

(3) the result of the election has been materially affected by the improper acceptance or refusal of any nomination or of a vote, or by any non-compliance with the provisions of the Government of India Act or the Rules and Regulations made thereunder, or by any other irregularity, or

(4) the election has not been a free election on account of the large number of cases in which undue influence or bribery has been exercised or committed,

the election of the returned candidate must be void.[2]

But, if the Commissioners are of opinion that in spite of all efforts on the part of the returned candidate and his election agent, some corrupt practices of trivial and unimportant character have been committed, for which the candidate or his election agent was in no way responsible, they may not declare his election void.[3]

Report of the Election Commissioners and procedure thereon.

When the trial is over, the Commissioners have to report whether the returned candidate or any other party to the petition who has claimed the seat has been duly elected.[4] They will also have to state the total amount of costs payable and name the persons by and to whom such costs should be

[1] Electoral Rule 39 (4).
[2] *Ibid.*, 44 (1).
[3] *Ibid.*, 44 (2).
[4] *Ibid.*, 45 (1).

paid.[1] The report will have to be forwarded to the Governor-General or the Governor, as the case may be, who, on receiving the same, will issue, in accordance with it, orders which will be final.[2] In case of a difference of opinion among the Commissioners, the opinion of the majority will prevail.[3]

Where any definite charge is made in an election petition of a corrupt practice, the Commissioners must state in their report if any such practice has been proved to have been committed, and if so, who is, or are, responsible for it and what its nature is.[4]

Other consequences of the more serious election offences.

We may note here also that besides the loss of electoral rights and the infliction of criminal punishments, there are other penalties attached to the more serious election offences like bribery, undue influence and personation. A person who has been proved guilty of any such malpractices in connection with an election is disqualified, unless he has been exempted from such disqualification, for five years from—

(1) 'being appointed to, or acting in, any judicial office; or

(2) being elected to any office of any local authority, or holding or exercising any such office to which no salary is attached; or

(3) being elected, or sitting or voting as a member of any local authority; or

(4) being appointed or acting as a trustee of a public trust.'[5]

Corrupt practices at elections.

In spite of all these stringent laws to restrain improper conduct at elections, elections held under the Reforms have not been altogether free from corruptions. There have been cases of bribery and undue influence. Many members of the

[1] Electoral Rule 45 (2). [2] *Ibid.*, 45 (3).
[3] *Ibid.*, 46. [4] *Ibid.*, 47.
[5] The Indian Elections Offences and Inquiries Act, 1920, Part II, Section 13.

land-owning class, contesting seats in general constituencies in rural areas, allowed their paid servants to conduct electoral campaigns in their behalf in such a manner as very often interfered with the free exercise of electoral rights by their tenantry. The remedy, of course, lies in public watchfulness and exposure, but it is often extremely difficult to prove a case of corruption against a powerful candidate, especially when he happens to be a landlord. The system of voting by ballot does undoubtedly act as a great safeguard against many otherwise possible corruptions. It is hoped, however, that these corruptions will gradually disappear with the continued exercise by the people of their political rights and a further growth of their civic consciousness.

FORM OF NOMINATION PAPER

SCHEDULE III, ELECTORAL RULE 11.

Name of the constituency for which the candidate is nominated..

Name of candidate..

Father's name..

Age..

Address..

* Denomination (i.e. community)..................................

Constituency on the electoral roll of which the candidate is registered as an elector..

† No. of the candidate in the electoral roll of the constituency in which he is registered as an elector.................

Name of proposer..

* Not to be entered in case of a special constituency.

† Where the electoral roll is sub-divided and separate serial numbers are assigned to the electors entered in each sub-division, a description of the sub-division in which the name of the person concerned is entered must also be given here.

† Number of the proposer in the electoral roll of the constituency..

Signature of the proposer..

Name of the seconder..

† Number of the seconder in the electoral roll of the constituency..

Signature of the seconder..

Declaration by the Candidate

I hereby declare that I agree to this nomination.

Date...............Signature of the candidate..................

....

(To be filled in by the Returning Officer or other authorized person.)

Certificate of Delivery

This nomination paper was delivered to me at my office at (date and hour........................) Serial No.............

....

Returning Officer or other authorized person.

Certificate of Scrutiny

I have scrutinized the eligibility of the candidate, the proposer and seconder, and find that they are respectively qualified to stand for election, to propose and to second the nomination.

....

Returning Officer or other authorized person.

NOTE A

'If a person representing himself to be a particular elector named on the electoral roll applies for a ballot paper after another person has voted as such elector, the applicant shall, after duly answering

† Where the electoral roll is sub-divided and separate serial numbers are assigned to the electors entered in each sub-division, a description of the sub-division in which the name of the person concerned is entered must also be given here.

such questions as the presiding officer may ask, be entitled to mark a ballot paper in the same manner as any other voter. Such ballot paper (. . . referred to as a "TENDERED BALLOT PAPER") shall be of a colour different from the other ballot papers, and, instead of being put into the ballot box, shall be given to the presiding officer and endorsed by him with the name of the voter and his number on the electoral roll and the name of the electoral area to which the roll relates and shall be set aside in a separate packet and shall not be counted by the returning officer.' See the Bengal, Bihar and Orissa, Madras and Bombay Electoral Regulations.

NOTE B

If a resolution in favour of the introduction of proportional representation is passed by a provincial Legislative Council or by either Chamber of the Indian Legislature after not less than one month's notice has been given of an intention to move such a resolution, the local Government or the Governor-General in Council, as the case may be, may introduce for any plural-member constituencies the method of election by the single transferable vote, and make all necessary regulations for the purpose, and may group together single-member constituencies so as to make new plural-member constituencies.—Electoral Rule 15.

CHAPTER XIII

THE INDIAN LEGISLATURE—ITS PRIVILEGES AND POWERS

Freedom of speech in the Indian Legislature—Limitations on debate—Provincial Legislatures and freedom of speech—Powers of the Indian Legislature—Assent of the Governor-General to Bills—Power of the Crown to disallow Acts—Extraordinary method of legislation—Joint Select Committee on the extraordinary method of legislation—Exercise of the extraordinary power of legislation—Indian Budget—Non-votable heads of expenditure—Indian non-votable expenditure compared with the English Consolidated Fund charges—Mr. Ginwala's resolution about non-votable expenditure—Restoration of a reduced or refused demand—Joint Select Committee on the 'restoration power'—Financial powers of the Parliaments of Canada, Australia and the Union of South Africa—Montagu-Chelmsford Reforms and the Central Government.

We have in the preceding pages discussed the nature and composition of the Indian legislatures; we shall now describe in this and in the following chapter their privileges[1] and powers.

Freedom of speech in the Indian Legislature.

A member of the Indian Legislature enjoys[2] freedom of speech and is not liable to any proceedings in any court for his speech or vote in either Chamber, or for anything published in any official report of the proceedings of either Chamber.

[1] No salary attaches to the office of member of either Chamber of the Indian Legislature; but he is entitled to receive 'travelling and halting' allowances for attendance at its meetings. This is also the arrangement in the case of a Governor's Legislative Council.

Further, members of the Legislative Assembly and of the provincial Legislative Councils do not enjoy the designation 'Honourable' which is enjoyed by the members of the Council of State during their tenure of office. But members of the Legislative Assembly and of the provincial Legislative Councils are entitled to affix the letters M. L. A. and M. L. C. respectively to their names.

[2] Section 67 (7) of the Act.

He may, therefore, say, subject, of course, to the Rules and Standing Orders of the Chamber of which he is a member, whatever he thinks fit in debate, and no action can be taken against him for libel in any court of law. This freedom of speech, to quote the words of Sir Erskine May,[1] is a privilege essential to every free Council or Legislature. 'The fullest and most complete ventilation of every plan, object and purpose is,' says another distinguished writer, 'necessary to wise and beneficial legislation. This could never be secured if the members should be under the restraints imposed by the law of slander and libel upon private character. There is no doubt that this privilege may be grossly abused, since every word used in debate, and frequently something more, is now reported to the public; but the danger to the general welfare from its curtailment is far greater than that to individuals from its exercise.'[2]

Limitations on debates.

But it may be pointed out here that this freedom of speech does not mean immunity from any action whatsoever within the Legislature itself. A member may be promptly called to order for using unparliamentary expressions. He may even be censured by the House to which he belongs and may have to offer an explanation or apology to its satisfaction. The matter of every speech must be strictly relevant to the subject before the House. Besides, he is, under a Standing Order,[3] forbidden, while speaking, (i) to refer to any matter of fact on which a judicial decision is pending; (ii) to make a personal charge against a member; (iii) to make use of offensive expressions regarding the conduct of the Indian or any local legislature; (iv) to reflect upon the

[1] See his *Parliamentary Practice* (twelfth edition), p. 96.
[2] *Political Science and Constitutional Law*, by Mr. J. W. Burgess, Vol. II, p. 122.
[3] Legislative Assembly Standing Order 29 (2) and Council of State Standing Order 28 (2).

conduct of His Majesty the King or the Governor-General or any Governor (as distinct from the Governments of which they are respectively the heads) or any court of law in the exercise of its judicial functions; or (v) to utter treasonable, seditious or defamatory words. These safeguards are quite sufficient to keep a member on the right path.

If a member persists in irrelevance or in tedious repetition either of his own arguments or of the arguments used by other members in debate, he may be directed by the President to discontinue his speech.[1] Nor can he use his right of speech for wilfully and persistently obstructing the business of the House of which he is a member.

Another point to be noted in this connexion is that there is nothing in the Act to protect a member from being legally dealt with in a court of law if he himself publishes his speech which is actionable. In England, 'if a member publishes his speech', says Sir Erskine May,[2] 'his printed statement becomes a separate publication, unconnected with any proceedings in Parliament.' In the absence of anything to the contrary, it may be presumed that the publication of a libellous speech, delivered in either Chamber of the Indian Legislature, otherwise than officially, is punishable.

We may state here that the members of the provincial legislatures[3] enjoy similar freedom of speech, subject to similar restrictions, as is enjoyed by the members of the Indian Legislature.

A few other privileges have been conferred on the members of the legislative bodies constituted under the Government of India Act. The Reforms Enquiry Committee, 1924, recommended[4] that the members of the

[1] Indian Legislative Rule 16.

[2] See *Parliamentary Practice* (twelfth edition), p. 100.

[3] These include the Legislative Councils of Lieutenant-Governors (if any) and Chief Commissioners.

[4] *Majority Report*, para 91.

legislatures constituted under the Act should be exempted from serving as jurors or assessors in criminal trials, and that the Code of Civil Procedure, 1908, should be 'amended for the purpose of granting to members immunity from arrest and imprisonment for civil causes during the sessions of the legislatures and for periods of a week immediately preceding and following actual meetings.' These recommendations, slightly modified, have been embodied in an Act of the Indian Legislature. Under this Act,[1] members of the legislative bodies constituted under the Government of India Act are exempt from liability to serve as jurors or assessors. Secondly, no person is liable to arrest or detention in prison under civil process—

(*a*) if he is a member of a legislative body constituted under the Government of India Act, during the continuance of any meeting of such body ;

(*b*) if he is a member of any committee of such body, during the continuance of any meeting of such committee ;

(*c*) if he is a member of either Chamber of the Indian Legislature, during the continuance of a joint sitting of the Chambers, or of a meeting of a conference or joint committee of the Chambers of which he is a member ;

and during the fourteeen days before and after such meeting or sitting.

Any person released from detention under the above provisions is liable, subject, however, to their requirements, to re-arrest and to the further detention to which he would have been liable if he had not been released under those provisions.

[1] See the Legislative Members' Exemption Act, 1925 (Act No. XXIII of 1925); also Section 320 of the Code of Criminal Procedure, 1898.

Powers of the Indian Legislature.

We have previously[1] dwelt on the non-sovereign and subordinate character of the Indian legislative bodies and shown how their authority has been limited by the Government of India Act. We shall now describe their specific powers and functions. We propose to deal with the Indian Legislature in this chapter.

The Indian Legislature is empowered to make laws[2]—

(1) for all persons, for all courts, and for all places and things, within British India;

(2) for all subjects of His Majesty and servants of the Crown within other parts of India;

(3) for all native Indian subjects of His Majesty, without and beyond as well as within British India;

(4) for the Government officers, soldiers, airmen, and followers in His Majesty's Indian forces, wherever they are serving, in so far as they are not subject to the Army Act or the Air Force Act;

(5) for all persons employed or serving in or belonging to any naval forces raised by the Governor-General in Council, wherever they are serving, in so far as they are not subject to the Naval Discipline Act[3]; and

[1] Section 65 (2) of the Act.

[2] Section 65 (1) of the Act.

[3] The functions of the Indian Marine have hitherto been—

(1) the transport of troops in 'Indian waters', i.e. the high seas between the Cape of Good Hope on the West and the Straits of Magellan on the East, and any territorial waters between those limits;

(2) the maintenance of station ships (at the Andamans and Aden), the visiting of Light Houses in the Red Sea, the Persian Gulf, Burma, and the Marine Survey of India; and

(3) the maintenance of the Bombay Dock-yard and of all military launches.

It is maintained out of the revenues of India. The total expenditure in each year from 1922-23 to 1926-27 was as follows:—

1922-23	...	...	Rs. 1,39,98,618
1923-24	...	...	,, 96,54,425
1924-25	...	...	,, 74,10,717
1925-26	...	...	,, 67,30,028
1926-27	...	...	,, 65,33,481

(*Statistical Abstract for British India* from 1916-17 to 1925-26;

(6) for repealing or altering any laws which for the time being are in force in any part of British India or apply to persons for whom the Indian Legislature has power to make laws.

But it is not, unless so authorized[1] by Act of Parliament, empowered to make any law repealing or affecting[2]—

(1) any Act of Parliament passed after the year 1860 and extending to British India (including the Army Act, the Air Force Act and any Act amending the same); or

(2) any Act of Parliament enabling the Secretary of State in Council to raise money in the United Kingdom for the Government of India.

Nor has it any power to make any law affecting the authority of Parliament, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom, or affecting the sovereignty or dominion of the Crown over any part of British India[3]. Besides, it cannot without the

also *Finance and Revenue Accounts of the Government of India* for 1926-27.)

For further details about the (Royal) Indian Marine, see Ilbert's *Government of India* (third edition), pp. 233-34 ; also see the Report of the Indian Retrenchment Committee, 1922-23, pp. 66-77.

[1] For instance, the Indian Legislature has, under Section 131 (3) of the Government of India Act, power to repeal or alter some of the provisions of the Act mentioned in the fifth Schedule to the Act. See Appendix L.

[2] Section 65 (2) of the Act.

[3] Sub-section 2 of Section 65 of the Act.

This limitation on the power of the Indian Legislature is, as Mr. Justice Markby said (6 Bengal Law Reports, p. 482), 'certainly couched in language to the last degree vague and obscure.'

Ilbert also is of opinion that it is 'somewhat indefinite.'—*The Government of India*, third edition, p. 235.

There are, however, some important judicial pronouncements on the purport and effect of this limitation.

In the case of *Bugga v. The King-Emperor*, the Privy Council stated in the course of its judgment as follows :—

'The sub-section does not prevent the Indian Government from passing a law which may modify or affect a rule of the constitution or

previous sanction of the Secretary of State in Council, make any law empowering any court, other than a High Court, to sentence to the punishment of death any of His Majesty's subjects born in Europe, or the children of such subjects, or abolishing any High Court.

Subject to the requirements of the Government of India Act, the Indian Legislature may provide for the application of the provisions of the Naval Discipline Act[1] (i) to the naval forces raised and provided by the Governor-General in Council, with such modifications thereof as may be made by it to adapt the Act to the circumstances of India; and (ii) to the forces and ships of His Majesty's Navy not raised and provided by the Governor-General in Council,

of the common law upon the observance of which some person may conceive or allege that his allegiance depends. It refers only to laws which directly affect the allegiance of the subject to the Crown, as by a transfer or qualification of the allegiance or a modification of the obligations thereby imposed. In the case of *In re Ameer Khan* (2) the meaning of a similar provision in the Act of 1833 (3 and 4 Will. 4, c. 85, s. 43) was discussed at length, and Phear, J. stated his opinion as follows: "But I think it right to say that in my judgment the words 'whereon may depend, etc.,' do not refer to any assumed conditions precedent to be performed by or on behalf of the Crown as necessary to found the allegiance of the subject, but to laws or principles which prescribe the nature of the allegiance—viz., of the relations between the Crown on the one hand and the inhabitants of particular provinces, or particular classes of the community, on the other. . . ."—47 *I.A.*, p. 138; 6 Beng. L. R., p. 477.

See in this connexion the judgments of Mr. Justice Norman, Mr. Justice Phear and Mr. Justice Markby in the case of *In the matter of Ameer Khan.*—6 Bengal Law Reports, pp. 435-56, and pp. 465-83.

We may quote here a line or two from the judgment of Mr. Justice Markby. 'I wholly repudiate the doctrine contended for,' said Mr. Justice Markby, 'that the allegiance of a subject to his Sovereign can by any possibility be legally affected by the mere withdrawal from the subject of any right, privilege, or immunity whatsoever. I think the notion of reciprocity expressed in the maxim *protectio trahit subjectionem, et subjectio protectionem* (allegiance and protection are reciprocally due from the subject and the sovereign), upon which this argument depends, is one which is wholly inadmissible in any legal consideration.'—*Ibid.*, pp. 482-83.

Vide also L. R. 46, I. A., p. 191; also Sapru, *The Indian Constitution*, pp. 74-75.

[1] Obviously, it is an English Act.

with such modifications thereof as may be made by His Majesty in Council for the purpose of regulating the relations of the last-mentioned forces and ships to the forces and ships raised and provided by the Governor-General in Council. But if any forces and ships raised and provided by the Governor-General in Council are placed at the disposal of the Admiralty, the said Act will apply without any such modifications as aforesaid[1].

A member cannot, without the previous sanction of the Governor-General, introduce in either Chamber of the Indian Legislature any measure affecting[2]—

(1) the public debt or public revenues of India or imposing any charge on the revenues of India; or

(2) the religion or religious rites and usages of any class of British subjects in India; or

(3) the discipline or maintenance of any part of His Majesty's military, naval or air forces; or

(4) the relations of the Government with foreign princes or States:

or any measure

(*a*) regulating any provincial subject, or any part of a provincial subject, which has not been declared by rules under the Government of India Act to be subject to legislation by the Indian Legislature; or

(*b*) repealing or amending any Act of a Local Legislature; or

(*c*) repealing or amending any Act or Ordinance made by the Governor-General.

[1] The original section 66 of the Government of India Act has been replaced by this new provision.

Vide the Government of India (Indian Navy) Act, 1927 (17 and 18 Geo. 5, Chapter viii), Section 1(4).

[2] Section 67 (2) of the Act.

If in either Chamber of the Indian Legislature a Bill is introduced, or is proposed to be introduced, or any amendment to a Bill is moved, or proposed to be moved, and if the Governor-General certifies that the Bill, or any clause of it, or the amendment, affects the safety or tranquillity of British India, or any part thereof, and directs that no consideration, or no further consideration, is to be given to the said Bill, clause or amendment, then effect must be given to such direction.[1]

Assent of the Governor-General to Bills.

When a Bill is passed by both Chambers of the Indian Legislature, the Governor-General may assent to it or may withhold his assent from it, or may reserve it for the signification of His Majesty's pleasure thereon.[2] He may, instead of doing any of these things, return the Bill for reconsideration by either Chamber.[3] But the Bill cannot become an Act until it has received the assent of the Governor-General, or, if it was reserved for the signification of His Majesty's pleasure, until His Majesty in Council has signified his assent thereto, and that assent has been notified by the Governor-General.[4] Finally, an Act of the Indian Legislature, duly assented to by the Governor-General, may be disallowed by His Majesty in Council and it becomes void as soon as such disallowance is notified by the Governor-General.[5]

Power of the Crown to disallow Acts.

This executive veto on legislation is not peculiar to the Indian Constitution only. It exists in England as well as in the self-governing Dominions like Canada and Australia.[6]

[1] Section 67 (2*a*) of the Act.
[2] *Ibid.*, 68 (1) of the Act.
[3] *Ibid.*, 67 (4) of the Act.
[4] *Ibid.*, 68 (2) of the Act.
[5] *Ibid.*, 69 of the Act.
[6] The Commonwealth of Australia Constitution Act, 1900, Sections 58-60. The British North America Act, 1867, Sections 55-57. The Colonial Governor, says Prof. Keith, 'has an absolute discretion to refuse to assent to any and every Bill.'—*Responsible Government in the Dominions* (1909), p. 176.

The danger lies not in its existence so much as in the frequency of its exercise. The royal veto on Parliamentary legislation in England is practically obsolete ; [1] and so far as the Dominion legislation is concerned, it is, according to Prof. Dicey,[2] 'now most sparingly exercised, and will hardly be used unless a Bill directly interferes with Imperial interests or is as regards the colonial legislature *ultra vires.*' There is, however, one point of difference in form in respect of the executive veto between India and, say, Canada. In India the Governor-General gives or withholds his own assent ; in Canada the Governor-General thereof assents to a Bill in the King's name or withholds the king's assent therefrom.

It may be pointed out here that, in the present circumstances, the occasions for the exercise of the executive veto on Bills passed by the two Chambers of the Indian Legislature will be very rare, since, under the Act,[3] the Governor-General may, by mere certification, forbid the very consideration of a measure which he considers dangerous to the safety or tranquillity of British India or of any part thereof. Besides, as we have seen before, since the introduction of certain measures requires the previous sanction of the Governor-General, he may refuse such sanction in the case of any objectionable Bill.[4]

[1] The last royal veto was given in 1707; see p. 280 of Lowell's *Government of England,* vol. i.

'The necessity of refusing the royal assent is removed by the strict observance of the constitutional principle, that the Crown has no will but that of its ministers, who only continue to serve in that capacity so long as they retain the confidence of Parliament. This power was last exercised in 1707, when Queen Anne refused her assent to a Bill for settling the militia in Scotland.'—May, *Parliamentary Practice,* p. 395.

[2] Dicey, *Law of the Constitution,* Introduction, p. xxx ; see also pp. 110–16, *ibid.* (eighth edition).

[3] Section 67 (2*a*) of the Act. See p. 200 *ante.*

[4] See page 199 *ante.*

Extra-ordinary method of legislation.

We have described above the ordinary method of legislation; we shall now consider what may be regarded as the extraordinary method of legislation under Section 67B of the Act, which runs substantially as follows:—

If either Chamber of the Indian Legislature refuses leave to introduce, or fails to pass in a form recommended by the Governor-General, any Bill, the latter may certify that its passage is essential for the safety, tranquillity or interests of British India or any part thereof. Thereupon, if the Bill has already been passed by the other Chamber, it will, on signature by the Governor-General, forthwith become an Act of the Indian Legislature in the form as originally introduced or proposed to be introduced in the Indian Legislature, or, as the case may be, in the form recommended by the Governor-General, in spite of the fact that it has not been agreed to by both Chambers; but, if the Bill has not already been so passed, it must be laid before the other Chamber, and, if consented to by that Chamber in the form recommended by the Governor-General, will become an Act on the signification of his assent, or, if not so consented to, will, on his signature, become an Act.[1] Every such Act must, as soon as practicable after being made, be laid before both Houses of Parliament. But it cannot have the force and effect of law until copies of it have been laid before each House of Parliament for not less than eight days on which that House has sat, and, thereafter, until His Majesty in Council has signified his assent thereto, and that assent has been notified by the Governor-General. But if, in the opinion of the Governor-General, a state of emergency exists, he may direct that any such Act will come into operation immediately, and thereupon it will have the force and effect

[1] Section 67B (1) of the Act.

of law, subject, however, to disallowance by His Majesty in Council.[1]

Joint Select Committee on the extraordinary method of legislation.

The above provision has been inserted in the Act in order, in the words of the Joint Select Committee,[2] to empower the Governor-General in Council to secure in all circumstances legislation which is required for the discharge of his responsibilities. The Committee, however, advised[3] that all Acts passed in this (extraordinary) manner should be laid before Parliament that it might be fully apprised of the position and of the circumstances which led to the exceptional procedure. But it is very unlikely that Parliament will ever disapprove of an action taken by the Governor-General under the above Section, even if the latter may have acted most arbitrarily; since, such disapproval may force his resignation—a situation which Parliament will not ordinarily like to face.

Exercise of the extraordinary power of legislation.

The first exercise of this extraordinary power by the Governor-General took place in September, 1922, in connection with the passing of the 'Indian States (Protection against Disaffection) Bill,' popularly known as the Princes' Protection Bill.[4] We need not enter here into the merits of the measure. The Legislative Assembly refused leave for the introduction of the Bill. Thereupon the Governor-General certified that the passage of the Bill was essential for the interests of British India. It was then introduced into the Council of State with a recommenda-

[1] Section 67B (2) of the Act.
[2] Report from the Joint Select Committee on the Government of India Bill, Clause 26.
[3] *Ibid.*
[4] *India in 1922-23* by Dr. Rushbrook Williams, pp. 98 and 284.
For details see the proceedings of the Indian Legislature; see also the pamphlet entitled *The First Legislative Assembly* prepared by the Director of Public Information, p. 10.

tion from the Governor-General to pass it in the form in which it was presented. And it was so passed by the Council of State. The Bill then, on signature by the Governor-General, became an Act without the assent of the Assembly. The next occasion for the use of this power arose in connection with the passing of the Finance Bill of the year 1923.[1] The Bill as first introduced into the Legislative Assembly contained a clause providing for an increase in the salt duty from Re. 1–4–0 to Rs. 2–8–0 per maund. The Assembly, however, accepted an amendment in favour of the maintenance of the then rate of Re. 1–4–0 per maund. The Finance Bill thus amended in respect of the salt tax was carried by the Assembly. It then came up in the form recommended by the Governor-General before the Council of State, with the salt duty doubled. It was passed by the Council by a majority of twenty-eight votes against ten. The Council thus reversed the decision of the Assembly regarding salt tax. The Bill was reintroduced into the Assembly in the form in which it had been passed by the Council, with a recommendation by the Governor-General to pass it. But it was rejected by the Assembly by fifty-eight votes against forty-seven. It was then certified by the Governor-General and became an Act. The Finance Bill of the year 1924 was also passed into Act by 'certification' by the Governor-General.[2] The Bill, as recommended by the Governor-General, was rejected by the Assembly, but consented to by the Council this time also.

It may be noted here that the insertion of this empowering clause in the Act and its use in connection with the passing of the Princes' Protection Bill and the Finance

[1] *India in 1922–23* by Dr. R. Williams, pp. 115–16 and 295; see also *India's Parliament at Delhi—Delhi Session* 1923, by the Director, Central Bureau of Information, pp. 37–40. For full details see the relevant proceedings of the Indian Legislature.

[2] See the Government of India's Notification No. 996-F., dated Delhi, March 28, 1924.—*The Gazette of India* (Extra.), March 31, 1924.

Bill of the year 1923, have done much, in the opinion of many responsible persons, to make the Reforms unpopular.

The Indian Budget.

The estimates of the annual expenditure and revenue of the Governor-General in Council are placed before each Chamber of the Indian Legislature in the form of a statement.[1] These estimates as embodied in the statement are referred to as the Indian Budget. They are presented to each House on such day or days as the Governor-General appoints.[2] No member can make any proposal for the expenditure of public revenue, except on the recommendation of the Governor-General.[3] This apparent curtailment of the rights of the non-official members is not peculiar to our Constitution only. The House of Commons[4] in England 'will not receive any petition, or proceed upon any motion, for a grant or charge upon the public revenue unless recommended from the Crown.' Such a restrictive clause is to be found in the Constitutions of self-governing Dominions[5] like Canada, Australia and South Africa. Experience has

[1] Section 67A (1) of the Act.

[2] The Indian Legislative Rule 43.

Under the new budget procedure, introduced with effect from 1925–26, Railway Finance has been separated from General Finance, and the Budget of the Government of India is presented to the Legislature in two parts. They are known as the Railway Budget and the General Budget. Each Budget is presented to the two Chambers of the Legislature simultaneously on a day in each year appointed by the Governor-General. The Railway Budget is introduced in advance of the General Budget which is introduced nowadays in the afternoon of the last day of February every year. The General Budget is presented to the Legislative Assembly by the Finance Member, and to the Council of State by the Finance Secretary. Similarly, the Railway Budget is introduced into the Assembly by the Member for Commerce and Railways, and into the Council of State by the Chief Commissioner for Railways. The procedure for dealing with either Budget is the same.

[3] Section 67A (2) of the Act.

[4] Lowell, *Government of England*, vol. i. p. 279.

[5] The British North America Act, 1867, Section 54. The Commonwealth of Australia Constitution Act, 1900, Section 56; South Africa Act, 1909, Section 62.

proved that such a restriction is absolutely necessary to prevent the expenditure of public money on projects of local and, very often, of questionable importance, on the initiative of private members who, in most cases, in order to ensure their return at the next election, do everything they can, regardless of consequences of their action to the public treasury, to please their respective constituencies.[1] Speaking about the English system, President Lowell says that it has proved not only an invaluable protection to the Treasury, but a bulwark for the authority of the Ministry.[2] Commenting on the relevant clause in the British North America Act, 1867, Prof. Egerton[3] remarks that 'before 1840 the proposals by private members to make grants of public money had become a scandal and a nuisance. The remedy was to secure the previous recommendation of the Crown.

As a further extension of the principle just discussed, we find that when any motion is made demanding a grant for a definite object, no amendment is in order either to increase the grant or to alter its destination.[4] But, as will be seen later, motions may be moved at this stage to reduce the grant.[5]

Non-votable heads of expenditure.

We shall now consider the non-votable[6] heads of expenditure. Section 67A (3) of the Act lays down that the proposals of the Governor-General in Council for the appropriation of public revenue relating to the following heads of expenditure

[1] This argument is at present particularly applicable in the case of provincial budgets.

[2] *The Government of England*, vol. i, pp. 279–80.

[3] *Federations and Unions in the British Empire*, p. 136, note 2.

[4] The Indian Legislative Rule 48 (2).

[5] *Ibid.*

[6] In 1925–26 the total 'voted' expenditure of the central Government was about Rs. 128 crores and the total 'non-voted' expenditure was about Rs. 119·25 crores. The corresponding figures for 1924–25 were about Rs. 130·50 crores and Rs. 114·34 crores.—*Statistical Abstract for British India* from 1916–17 to 1925–26, pp. 152–54

shall not be submitted to the vote of the Legislative Assembly, and that they shall not be open to discussion by either Chamber at the time when the annual statement is under consideration, unless the Governor-General otherwise directs :—

(1) interest and sinking fund charges on loans ;

(2) expenditure of which the amount is prescribed by or under any law ;

(3) [1] salaries and pensions[2] payable to or to the dependants of—

(*a*) persons appointed by or with the approval of His Majesty or by the Secretary of State in Council ;

(*b*) Chief Commissioners and Judicial Commissioners;

(*c*) persons appointed before the 1st of April, 1924, by the Governor-General in Council or by a local Government to services or posts classified by Rules under the Act as superior services or posts ; and

(4) sums payable to any person who is or has been in the civil service of the Crown in India, under any order of the Secretary of State in Council, of the Governor-General in Council, or of a Governor made upon an appeal made to him in pursuance of Rules made under the Act ; and

(5) expenditure classified by the order of the Governor-General in Council as

(*a*) Ecclesiastical ;

(*b*) Political ; and

[1] *Vide* the Government of India (Civil Services) Act, 1925.

[2] The expression 'Salaries and pensions' here includes remuneration, allowances, gratuities, any contributions (whether by way of interest or otherwise) out of the revenues of India to any provident fund or family pension fund, and any other payments or emoluments payable to or on account of a person in respect of his office.'—*Ibid.*

(*c*) Defence.[1]

The Governor-General is to decide whether any proposed expenditure does or does not relate to the above heads and his decision must be final.[2]

The proposals of the Government for the appropriation of revenue relating to the heads of expenditure other than those specified above are submitted to the vote of the Assembly in the form of demands for grants.[3] From this it is evident that the Council of State has no power to authorize expenditure. At first, under the Council of State original Standing Order 70, the Council had not even the power to discuss the Budget after it had been presented to it. The Standing Order has since been altered and the Budget is now open to discussion by the Council. After the proposals of the Government have been submitted to it in the aforesaid manner, the Assembly either assents or refuses its assent to any demand, or reduces the amount referred to in any demand by a reduction of the whole grant.[4]

Indian non-votable expenditure *vs.* English Consolidated Fund charges.

Regarding the non-votable heads of expenditure specified above, the Joint Select Committee held that it considered it necessary (as suggested to it by the Consolidated Fund charges[5] in the Imperial Parliament) to exempt certain charges of a special or recurring nature, which had been set out in the (Government of India) Bill, e.g., the cost of defence, the debt charges, and certain

[1] In 1925-26 the total expenditure for items (*a*), (*b*) and (*c*) were about Rs. 31·75 lacs, Rs. 3·36 crores and Rs. 60·39 crores respectively.—*Statistical Abstract for British India*, from 1916-17 to 1925-26, p. 148.

[2] Section 67A (4) of the Act.

[3] Section 67A (5) of the Act.

[4] Section 67A (6) of the Act.

[5] These charges are 'interest on the national debt, the Civil List or personal provision for the King, annuities for the royal family, certain pensions, and the salaries of the judges, of the Comptroller and Auditor-General, of the Speaker, and of a few officers of lesser importance.'—Lowell, *Government of England*, vol. i, p. 120.

fixed salaries, from the process of being voted.[1] But the suggested similarity is more apparent than real: there is one fundamental difference between the Consolidated Fund charges in England and the non-votable heads of expenditure of the Indian Budget. The former 'are payable by statute out of the Consolidated Fund, and hence do not require an annual vote of Parliament, or come before the Committee of Supply.'[2] We should note the expression 'by statute.' Now this statute is made by no other authority than the British Parliament itself and can be amended or repealed to-morrow by the same body if it so desires. The authority to pay Consolidated Fund charges is given to the Government of England by permanent Acts[3] of Parliament, e.g., the Civil List Act, the National Debt and Local Loans Act, 1887, etc. But by 'permanent Acts' it is not to be understood that they are unalterable by Parliament. The expression simply means that these Acts are not annually made. Parliament's authority over the distribution of public money is as unlimited as it is unquestionable. 'Not a penny of revenue,' says Prof. Dicey,[4] 'can be legally expended except under the authority of some Act of Parliament.' The position in India is entirely different. Certain heads of expenditure have been made non-votable not by any Act of the Indian Legislature, but by an Act of the Imperial Parliament; and until the

[1] Joint Select Committee's Report, Clause 25. Note also the following:—

'There is a further safeguard against irresponsible action by the Legislature in the matter of supply—that certain heads of expenditure are not to require an annual vote—in much the same way as the Consolidated Fund in this country.'—Lord Sinha's speech in the House of Lords. See *The Indian Constitution* by P. Mukherjee, p. 581.

[2] Lowell *Government of England*, vol. i, p. 284.

[3] See Dicey, *Law of the Constitution* (eighth edition), p. 313.

[4] *Ibid.*

Government of India Act is itself amended in respect of the relevant Section, they will continue to remain non-votable so far as the Legislative Assembly is concerned. Hence the analogy suggested by the Joint Select Committee appears to us to be rather misleading.

Mr. Ginwala's resolution about non-votable expenditure.

We should refer here to a very interesting incident. On January 26, 1922, Mr. P. P. Ginwala (Burma: non-European) moved a resolution in the Legislative Assembly, requesting the Government of India to abolish the distinction between 'votable' and 'non-votable' items in the Indian Budget, and to submit the whole of the Budget to the vote of this Assembly.[1] He held that under the Act the Governor-General had the discretion not only to submit all the proposals of the Government for the appropriation of revenue for discussion by the Assembly, but to submit them also to the vote of the Assembly. A most interesting debate[2] then followed. The resolution was slightly amended on a motion by Mr. F. McCarthy (Burma: European) who, by way of experiment, wanted to make it effective only in respect of the coming Budget, i.e. the Budget for the year 1922–23. Sir Malcolm Hailey (the then Finance Member) practically admitted in his reply that the wording of Section 67A (3) was somewhat ambiguous and stated that the ambiguity could not be removed without a reference to the Law Officers of the Crown. Though Sub-section (5)[3] of Section 67A of the Act, he pointed out, was clear on the question of the votability of the excepted items, yet there was a real difficulty of interpretation, and the Government

[1] See *Legislative Assembly Debates*, January 26, 1922, vol. ii, No. 23; pp. 1948-84.

[2] *Legislative Assembly Debates*, vol. ii, No. 23, January 26, 1922.

[3] It says: 'The proposals of the Governor-General in Council for the appropriation of revenue or moneys relating to heads of expenditure not specified in the above heads (i.e. items (1) to (5) on pages 207-208) shall be submitted to the vote of the Legislative Assembly in the form of demands for grants.'

was consequently placing the matter before the Law Officers of the Crown. The Resolution as amended by Mr. McCarthy was then adopted by the Assembly. On February 28, 1922, Sir Malcolm Hailey stated, in reply to a question, that the opinion of the Law Officers of the Crown had been received. In their view it was not competent for the Governor-General to place on the vote subjects which were by the statute reserved from that vote.[1]

Later on, on March 6, 1922, the President of the Assembly announced[2] that he had received a message from the Governor-General to the effect that the heads of expenditure[3] specified in Sub-section (3) of Section 67A of the Act would be open to discussion by the Legislative Assembly when the annual Financial statement would be under consideration. The Council of State too has since been allowed to discuss those items during the consideration of the Financial statement.

Restoration of a reduced or refused demand.

Under Sub-section (7) of Section 67A of the Act, the demands as voted by the Legislative Assembly are to be submitted to the Governor-General in Council who will, if he declares that he is satisfied that any demand which has been refused by the Assembly is essential to the discharge of his responsibilities, act as if it had been assented to, notwithstanding the withholding of such assent or the reduction of the amount therein referred to, by the Legislative Assembly. In the year 1924 when the demands for grants for the Customs, Income-tax, Salt and Opium Departments were rejected by the Assembly, they were restored by the Governor-General in Council under this Sub-section.[4]

[1] *Legislative Assembly Debates*, vol. ii, No. 37 ; February 28, 1922, pp. 2625–29.

[2] *Ibid.*, vol. ii, No. 40 ; March 6, 1922, p. 2754.

[3] See pp. 207–208 *ante*.

[4] Government of India Notification No. 996–F, Delhi, dated March 28, 1924. *The Gazette of India* (Extra.), March 31, 1924.

Commenting on this Sub-section, the Joint Select Committee stated in its Report[1] that it was not within the scheme of the Government of India Bill to introduce at that stage any measure of responsible Government into the central administration, and that a power must be reserved to the Governor-General in Council of treating as sanctioned any expenditure which the Assembly might have refused to vote if he considered the expenditure to be necessary for the fulfilment of his responsibilities for the good government of the country. It should be understood from the beginning, it continued, that this power of the Governor-General in Council was real, and that it was meant to be used if and when necessary.

Joint Select Committee on 'restoration' power.

Under Sub-section (8) of 67A of the Act, the Governor-General can, notwithstanding anything stated above, authorize, in cases of emergency, such expenditure as may, in his opinion, be necessary for the safety or tranquillity of British India or any of its parts.

It may be mentioned here that there are no such provisions for the 'restoration' and 'authorization' of grants in the Constitutions[2] of Canada, Australia and the Union of South Africa as are provided by Sub-sections[3] (7) and (8) of Section 67A of the Government of India Act. Let us take, for instance, the Constitution of Canada. Under it the Parliament of Canada can appropriate its Consolidated Revenue Fund as it thinks fit, the only limitation on its power in this respect being that the Fund is permanently charged with its cost of collection, with the interest of the provincial public debts, and with the

Financial powers of the Parliaments of Canada, Australia and the Union of South Africa.

[1] On Clause 25 of the Government of India Bill.

[2] See the British North America Act, 1867, the Commonwealth of Australia Act, 1900, and the Union of South Africa Act, 1909.

[3] See p. 211 and also the preceding paragraph.

salary of the Governor-General, fixed at £10,000 subject to alteration by the Parliament.[1] The last three payments will consecutively form the first, second and the third charge on the Fund.

Montagu-Chelmsford Reforms and the Central Government.

It will not be at all an exaggeration to state that in respect of the granting of supplies as in respect of other affairs under the administration of the Government of India, the advance made by the Montagu-Chelmsford Reforms upon the Morley-Minto Reforms[2] is, in essence, really insignificant[3] except in certain matters of form and procedure. Both in respect of finance and administration, the Central Legislature of India to-day plays practically the same rôle of critic and adviser as the Indian Legislative Council used to do under the Morley-Minto Reforms. This, as we shall see, can also be stated of the Governors' Legislative Councils, so far as the administration of the 'Reserved' subjects is concerned.

[1] The British North America Act, 1867, Sections 103-6.

[2] See the Indian Councils Act, 1909, and the Rules made thereunder.

[3] As that acute observer, Sir Valentine Chirol, says, 'The Act of 1919, it is true, transfers to the Indian Legislature no direct or complete statutory control over revenue and expenditure, and powers are still vested in the Government of India to override the Assembly in cases of emergency and to enact supplies which it refuses if the Governor-General in Council certifies them to be essential to the peace, tranquillity, and interests of India.'—*India Old and New*, p. 233

CHAPTER XIV

POWERS OF THE PROVINCIAL LEGISLATIVE COUNCILS

The Budget of a Governor's province—Financial powers of a Governor's Legislative Council—Lord Lytton's interpretation of the 'emergency clause' in Section 72D of the Act—Provision for case of failure to pass legislation in a Governor's Legislative Council—The Joint Select Committee on the extraordinary power of legislation—Powers of any local Legislative Council—Assent to provincial Bills—Removal of doubts as to the validity of certain Indian laws.

We shall first discuss the special powers of a Governor's Legislative Council before we deal with the general powers which every provincial Legislative Council[1] can exercise under the Government of India Act.

The Budget of a Governor's province.

A statement of the estimated annual expenditure and revenue of a Governor's province is presented to the local Legislative Council in each year on such day as the Governor appoints.[2] This is referred to as the provincial Budget. No motion for the appropriation of any provincial revenue can be made, except on the recommendation of the Governor communicated to the Council.[3] The proposals of the local Government for the appropriation of provincial revenues except under the following heads of expenditure are

[1] For instance, the Legislative Council of a Lieutenant-Governor (if there be any) or of a Chief Commissioner.

[2] Section 72D (2) of the Act and the Provincial Legislative Rule 25.

[3] Section 72D (2) (*c*) of the Act.

submitted to the vote of the Council in the form of demands for grants[1] :—

(1) contributions[2] payable by the local Government to the Governor-General in Council;

(2) interest and sinking fund charges on loans;

(3) expenditure of which the amount is prescribed by or under any law;

(4) salaries and pensions[3] payable to or to the dependants of—

(*a*) persons appointed by or with the approval of His Majesty or by the Secretary of State in Council;

(*b*) judges of the High Court of the province;

(*c*) the Advocate-General;

(*d*) persons appointed before the 1st of April, 1924, by the Governor-General in Council or by a local Government to services or posts classified by Rules under the Act as superior services and posts; and

(5) sums payable to any person who is or has been in the civil service of the Crown in India, under any order of the Secretary of State in Council, of the Governor-General in Council, or of a Governor, made upon an appeal made to him in pursuance of Rules made under the Act.[4]

Financial powers of a Governor's Legislative Council.

The Council may at this stage assent, or refuse its assent, to a demand, or may reduce the amount referred to therein either by a reduction of the whole grant or by the omission or reduction of any of the items of expenditure of which the grant is composed; but no motion will be in

[1] Section 72D (2) and (3) of the Act.

[2] The provincial contributions to the Government of India have been completely and finally remitted with effect from the year 1928-29. See Chapter xxiii, in this connexion.

[3] For the meaning of the expression 'Salaries and pensions' see page 207 *ante*.

[4] *Vide* the Government of India (Civil Services) Act, 1925.

order either to increase, or to alter the destination of, a grant.[1]

If any question arises whether any proposed expenditure is votable or not, the decision of the Governor thereon will be final.[2]

If any demand relating to a Reserved subject is refused either in its entirety or partially, and if the Governor certifies that the expenditure provided for by the demand is essential to the discharge of his responsibility for the subject, the local Government has power to act as if the demand had been granted.[3] Under this provision of the Act, the Governor has, in respect of Reserved subjects, power to restore, in the words of His Excellency Lord Lytton,[4] Governor of Bengal (1922–1927), every single grant in the Budget which has been rejected. With regard to Transferred subjects, however, he has no power, whatever his wishes may be, to restore a single grant.[5] Even if he may be temporarily in charge of the Transferred departments, they do not thereby become, to quote His Excellency again, Reserved departments, and his power of certification does not apply to them.[6] This power of

[1] Section 72D (2) and the Provincial Legislative Rule 30 (2).
The salary of the Minister has been treated as a separate question, see Chapter XXI.

[2] Section 72D (4) of the Act [3] Section 72D (2) (*a*) of the Act.

[4] Lord Lytton's speech in the Bengal Legislative Council on March 18, 1924.—*Vide The Statesman* (Dak edition), March 20, 1924.

[5] Lord Lytton's speech in the Bengal Legislative Council on March 18, 1924. *Vide* also His Excellency's speech in reply to the address of the representatives of the Indian Inspecting Officers (educational), delivered on June 12, 1924. In the course of his speech His Excellency said :—

'If it were in my power to restore the amount by certificate I should not hesitate to do so. . . . If the Legislative Council refuses any demand for a Transferred subject made by Government in its Budget, the Governor has no power to restore the amount. Education is a Transferred subject and so when the Council reduced the grant for the Inspecting staff from Rs. 7,46,900 to Rs. 1,11,500 Government had no option but to reduce the staff to correspond with the reduction.'

[6] *Ibid.*

restoration by certification has been rather frequently used since the inauguration of the Reforms. In the year 1924 the Governors of Bengal[1] and the Central Provinces[2] exercised this power in order to restore practically all the Budget demands for Reserved subjects, which were rejected by their Legislative Councils. Commenting on this certification clause in the Government of India Bill, the Joint Select Committee[3] held that, where the Council had reduced a provision for a Reserved subject, which the Governor considered essential to the proper administration of the subject concerned, he would have a power of restoration. It wished it to be perfectly clear that this

[1] See a communique of the Finance Department of the Government of Bengal.—*The Amrita Bazar Patrika*, dak ed., April 16, 1924.

[2] Notification by the Financial Secretary, the Central Provinces, dated March 24, 1924—*The Statesman*, dak ed., March 26, 1924.

[3] The Joint Select Committee's Report on Clause 11 of the Government of India Bill. We may also note here the Committee's views regarding Transferred subjects :—

'In cases where the Council alter the provision for a Transferred subject, the Committee consider that the Governor would be justified, if so advised by his Ministers, in resubmitting the provision to the Council for a review of their former decision ; but they do not apprehend that any statutory prescription to that effect is required.'

The Committee made this recommendation probably because of the want of experience of the provincial Legislative Councils in the parliamentary form of Government. But it appears to us that this recommendation goes against the principle of ministerial responsibility and is, if actually followed in practice, very likely to retard the growth of a due sense of responsibility in many members of those Councils. If the members of a Council, when voting against a grant, have this in their minds, that their action, so far as the particular grant is concerned, is final and will probably decide the fate of a particular Minister, they will seriously consider the question in all its aspects before they actually vote. But if they know that their first vote in respect of a particular demand is not decisive for the financial year and will not necessarily cause the fall of a Minister as he may advise the Governor to resubmit to the Council that very demand, they may, when the demand is made for the first time, vote against it in a spirit of lightheartedness. Such is human nature. Nor do we find any necessity for the resubmission of a demand relating to a Transferred subject which has been *simply altered*, in view of the provision for supplementary grants. See in this connexion pages 277–82.

power was real and that its exercise should not be regarded as unusual or arbitrary; unless the Governor had the right to secure supply for those services for which he would remain responsible to Parliament, that responsibility could not justly be fastened upon him. Herein then lies the justification of the 'restoration' clause. Full 'Provincial Autonomy' has not been granted by the Government of India Act. Under it the Governor acting with his Executive Councillors is still responsible for the administration of subjects known as 'Reserved', to the Government of India and, ultimately, to the British Parliament, and not to the local Legislative Council. And if he is to be held responsible for the efficient administration of those subjects, he should be invested with power to act, if necessary, in opposition to the wishes of the Legislative Council with respect to the granting of supplies for them. Complaints against the exercise of this power by any Governor are useless, since 'in the sphere of the reserved powers the elected councils are advisory only.'[1] The remedy lies in an amendment of the Act itself.

Lord Lytton's interpretation of the 'emergency clause' in Sec. 72D (2) of the Act.

Besides possessing the power of restoration as stated above, the Governor can, in cases of emergency, authorize, under Proviso (*b*) to Section 72D (2) of the Act, such expenditure as may be, in his opinion, necessary for the safety or tranquillity of his province or for the carrying on of any department. The word 'any' is very significant here. It implies any department of Government, whether Reserved or Transferred. The construction which Lord Lytton, Governor of Bengal, put upon the proviso is as follows[2]:—'This proviso is not limited to Reserved

[1] L. Curtis, *Dyarchy*, Introduction, p. xiv, para. 46.
[2] *Vide* Lord Lytton's speech in the Bengal Legislative Council already referred to.—*The Statesman* (dak edition), March 20, 1924.

subjects, and the power of authorizing expenditure may, therefore, be exercised in respect of any department of Government; but it is limited by the two considerations specified, namely, that the expenditure must be necessary for the safety and tranquillity of the province, or for carrying on a department. Here, again, I have certain powers within my discretion; but whereas in the case of Reserved subjects I have power to restore everything, in the case of Transferred subjects I can "restore" nothing, though I can "authorize" expenditure within very strict limits.' 'I can', he continued, 'if I so desire, authorize expenditure, for the carrying on of any department—that is to say, I can provide funds for all the Services, for all the departments and institutions of Government . . . . These institutions could be provided, if I so desire, with the salaries of their staff and the bare necessities of their existence, but nothing more. I could provide nothing for their expansion or improvement. It will not be in my power, whether I wish it or not, to do more than this. Government contributions to all aided institutions would at once lapse. No loans, no grants-in-aid, could be "authorized" by me. . . . Government aid to all local institutions would cease.' While the Governor of Bengal could not under the Proviso authorize any grant-in-aid and the Government aids to all local institutions would accordingly cease if the Budget proposals of the Government were rejected *in toto*, the Governor of the Central Provinces authorized certain items[1] which were classed as new expenditure, although they were really commitments of the Government in accordance with practice, such, for instance, as grants to local bodies for general purposes. It seems from the above that the Governor of the Central Provinces

[1] The Notification by the Financial Secretary, Central Provinces, already referred to above.—*The Statesman* (dak edition), March 26, 1924.

put a more liberal interpretation upon the Proviso. This difference in the construction put upon the Proviso in question by the two Governors may presumably be due to the fact that the interpretation of such vague expressions in it as 'in cases of emergency', 'the safety or tranquillity of the province', and 'for the carrying on of any department', has been left by the Act entirely to the discretion of the Governor.[1] It may be stated, however, as a general principle that the less this emergency power is exercised in respect of the demands for the Transferred subjects, the more will the object of the Reforms be fulfilled.

If any bill is introduced or proposed to be introduced, or any amendment to a Bill is moved or proposed to be moved, in a Legislative Council, and if the Governor certifies that the Bill or any clause of it or the amendment affects the safety or tranquillity of his province or any part of it or of another province, and directs 'that no proceedings or no further proceedings shall be taken by the Council in relation to the Bill, clause or amendment,' then effect must be given to any such direction.[2] Of course, the determination of what constitutes a danger to the safety or tranquillity of a province is left to the discretion of the Governor himself.

[1] The Governor of Bengal is reported to have said in the course of his reply to the members of the deputation from the Inspecting Officers of the Education Department (Foot note 5, p. 216) :—

'Proviso (*b*) was not intended by Parliament to enable a Governor to override the decision of a Legislative Council in respect of a Transferred subject. The power therein conferred was intended to be used only in a genuine emergency where owing to special or unforeseen circumstances no money is otherwise available for the safety of the province or for carrying on a department. If the Legislative Council deliberately and after due consideration decide that a school-inspecting staff under the Government is not necessary, however much I may disagree with them or deplore their decision, I cannot call that an emergency which would justify me in overriding it.'

[2] Section 72D (4) of the Act.

Provision for case of failure to pass legislation in a Governor's Legislative Council.

Let us now consider the extraordinary power of legislation vested in the Governor by Section 72E of the Act. If a Governor's Legislative Council refuses leave to introduce, or fails to pass in the form recommended by the Governor, any Bill relating to a Reserved subject, the latter may certify[1] that the passage of the Bill is essential for the discharge of his responsibility for the subject. Thereupon the Bill will, notwithstanding that it has not been agreed to by the Council, become, on signature by the Governor, an Act of the local Legislature in the form as originally introduced or proposed to be introduced in the Council or, as the case may be, in the form recommended by the Governor.[2]

The Governor must send an authentic copy of every Act made in this way to the Governor-General who will have to reserve the Act for the signification of His Majesty's pleasure. The Act cannot have the force and effect of law until it has received the assent of His Majesty in Council and that assent has been notified by the Governor-General.[3]

But for the avoidance of delay in case of an emergency, the Governor-General may, instead of reserving such Act, signify his assent thereto, and thereupon the Act will have the force of law, subject, however, to disallowance by His Majesty in Council.[4]

An Act made under this Section must, as soon as possible, be laid before each House of Parliament, and an Act which is required to be presented for His Majesty's assent, cannot be so presented until copies of it have been

[1] *E.g.*, the Bengal Criminal Law Amendment Bill, 1925, leave to introduce which had been refused by the local Legislative Council was certified by the Governor under Section 72E of the Act.

[2] Section 72E (1) of the Act.

[3] Section 72E (2) of the Act.

[4] Proviso to Section 72E (2) of the Act.

laid before each House of Parliament for not less than eight days on which that House has sat.[1]

The Joint Select Committee on the extraordinary power of legislation.

In justification of the necessity of vesting in the Governor such an extraordinary power of legislation, the Joint Select Committee stated[2] that, as the responsibility for legislation on Reserved subjects would be with the Governor in Council, the Governor should be empowered to pass an Act in respect of any Reserved subject, if he considered that the Act was necessary for the proper fulfilment of his responsibility to Parliament. The Committee advised, however, that he should not do so until he had given every opportunity for the matter to be thoroughly discussed in the Legislative Council, and as a sensible man he should, of course, endeavour to carry the Council with him in the matter by the strength of his case. But, it continued, if he found that that could not be so, then he should have the power to proceed on his own responsibility. Acts passed on his sole responsibility should be reserved by the Governor-General for His Majesty's pleasure, and be laid before Parliament. His Majesty would necessarily be advised by the Secretary of State for India, and the responsibility for the advice to be given to His Majesty could only rest with the Secretary of State.

POWERS OF LOCAL LEGISLATURES[3]

Section 80A of the Act lays down:—

The local legislature of any province can, subject to the provisions of the Act, make laws for the peace and good government of the territories for the time being

[1] Section 72E (3) of the Act.
[2] Report from the Joint Select Committee on Clause 13 of the Government of India Bill.
[3] Including the Legislative Council of a Lieutenant-Governor (if any) or of a Chief Commissioner (e.g., of Coorg).

constituting that province. It may further, subject to what follows, repeal or alter, as to that province, any law made either before or after the commencement of the Act by any authority in British India other than itself. It may not, however, without the previous sanction of the Governor-General, make or take into consideration any law—

Powers of any local Legislative Council.

(1) imposing or authorizing the imposition of any new tax, unless the tax is one exempted from this provision by Rules made under the Act; [1] or

(2) affecting the public debt of India, or the customs duties, or any other tax or duty for the time being in force and imposed by the authority of the Governor-General in Council for the general purposes of the Government of India, provided that the imposition or alteration of a tax under (1) above will not be deemed to affect any such tax or duty; or

(3) affecting the discipline or maintenance of any part of His Majesty's naval, military, or air forces; or

(4) affecting the relations of the Government with foreign princes or states; or

(5) regulating any Central [2] subject; or

(6) regulating any provincial [3] subject which has been declared by Rules under the Act to be, either wholly or partly, subject to legislation by the Indian Legislature, in respect of any matter to which such declaration applies; or

(7) affecting any power expressly reserved to the Governor-General in Council by any law for the time being in force; or

(8) altering or repealing the provisions of any law

[1] See the Scheduled Taxes Rules, Appendix E.
[2] Devolution Rule 3, Schedule I, Part I. Appendix B.
[3] *Ibid.*, Part II. Appendix B.

. . . which is declared by Rules made under the Act to be a law which cannot be repealed or altered by it without such previous sanction ;[1] or

(9) altering or repealing any provision of an Act of the Indian Legislature which, by its own provisions, may not be repealed or altered by the local legislature without such previous sanction.

But an Act or a provision of an Act made by a local legislature, and subsequently assented to by the Governor-General in pursuance of the Government of India Act, will not be deemed invalid by reason only of its requiring the previous sanction of the Governor-General under the latter Act.[2]

Finally, the local legislature of any province has not power to make any law affecting any Act of Parliament.[3] As a further limitation upon the powers of the members of a local Legislative Council, it is laid down that it will not be lawful for any member of the Council to introduce, without the previous sanction of the Governor, Lieutenant-Governor or Chief Commissioner, as the case may be, any measure affecting the public revenues of a province, or imposing any charge on those revenues.[4] This provision has been inserted, probably with a view to preventing the creation of a public charge on the initiative of private members and maintaining the authority of the Executive over the distribution of provincial revenues unimpaired.[5] But it cannot altogether prevent the Council from forcing the hands of the Government by passing a resolution in favour, say, of a certain kind of expenditure.

A Bill passed by a local Legislative Council cannot become

[1] See the Local Legislature (Previous Sanction) Rules, Appendix F.
[2] I.e. the Government of India Act.
[3] Section 80A (4) of the Act.
[4] Section 80C of the Act.
[5] See in this connexion pages 205-206 ante.

Assent to Provincial Bills.

law until it has received the assent of the head[1] of the local Government as well as of the Governor-General.[2] If either of them withholds his assent from the Bill, it lapses.[3] Where the Governor-General witholds his assent from a Bill duly assented to by the head of a local Government, he must inform the latter of his reason for such action.[4] The head of a local Government may, instead of assenting to or withholding his assent from a Bill passed by his Legislative Council, return it for reconsideration by the Council, either in whole or in part, together with any amendments which he may recommend,[5] or, in cases prescribed by Rules under the Act, may, and if the Rules so require, must reserve[6] it for the consideration of the Governor-General. A 'reserved' Bill, if assented to by the Governor-General within a period of six months from the date of the reservation, becomes law on the publication of such assent. But if it fails to receive the assent of the Governor-General within the period of six months, it lapses, unless before the expiration of that period either—

(1) it has been returned by the head of the local Government for further consideration by the Council; or

(2) in the case of the Council not being in session, a notification has been published of an intention so to return the Bill at the beginning of the next session.[7]

Further, where a Bill is reserved for the consideration of the Governor-General, the head of the local Government concerned may, at any time within six months from the date of the reservation of the Bill, with the consent of the Governor-General, return the Bill for further consideration by the

[1] I.e. the Governor, Lieutenant-Governor or Chief Commissioner, as the case may be.

[2] Section 81 of the Act.

[3] *Ibid.*

[4] *Ibid.*

[5] Section 81A (1) of the Act.

[6] For the Reservation of Bills and Rules, see Appendix G.

[7] Section 81A (2) (*c*) of the Act.

Legislative Council with a recommendation of amendments thereto. A 'reserved' Bill so returned to the Council for further consideration, may, if reaffirmed with or without amendment, be again presented to the head of the local Government.[1]

The Governor-General may (except where a Bill has been reserved for his consideration), instead of assenting to or withholding his assent from any Act passed by a local legislature, reserve the Act for the signification of His Majesty's pleasure thereon, and in such case the Act will not have validity until His Majesty in Council has signified his assent thereto and his assent has been notified by the Governor-General.[2]

Finally, His Majesty in Council has power to disallow any provincial Act even after it has been assented to by the Governor-General[3]; and if His Majesty in Council actually disallows any such Act, it will cease to have any effect from the date of the notification of such disallowance by the head of the local Government.[4]

VALIDITY OF INDIAN LAWS

Removal of doubts as to the validity of certain Indian laws.

Section 84 of the Act provides for the removal of doubts as to the validity of certain laws. It lays down—that (I) a law made by any authority in British India shall not be deemed invalid solely on account of any one or more of the following reasons:—

(1) in the case of an Act of the Indian Legislature or

[1] It is not clear from the Act whether the head of the local Government should 'reserve' a Bill for the second time. The Committee 'on Division of Functions' recommended in its report (para. 36) that he should not be bound to reserve a second time those Bills in respect of which the reservation procedure was compulsory, but might so reserve them if he thought fit.

[2] Section 81A (3) of the Act.

[3] When an Act has been assented to by the Governor-General, he must send an authentic copy thereof to the Secretary of State.

[4] Section 82 of the Act.

a local legislature, because it affects the prerogative of the Crown; or

(2) in the case of any law, because the requisite proportion of non-official members was not complete at the date of its introduction into a legislative body or its enactment; or

(3) in the case of an Act of a local legislature, because it confers on magistrates, who are also Justices of the Peace, the same jurisdiction over European British subjects as that legislature, by Acts duly made, could lawfully confer on magistrates in the exercise of authority over other British subjects in like cases;

that (II) a law made by any authority in British India and repugnant to any provision of the Government of India Act or any other Act of Parliament must, to the extent of that repugnancy but not otherwise, be void; and

that (III) nothing in the Government of India Act, 1919, or the Government of India Act, or in any Rules made thereunder, shall be construed as diminishing in any respect the powers of the Indian Legislature as laid down in Section[1] 65 of the Act, and the validity of any Act of the Indian Legislature or any local Legislature must not be open to question in any legal proceedings on the ground that the Act affects a provincial subject, or a central subject, as the case may be, and the validity of any Act made by the Governor of a province must not be so open to question on the ground that it does not relate to a Reserved subject.[2]

[1] See pages 196–98 *ante*.

[2] We may note the following in this connexion :—

'It is our intention to reserve to the Government of India a general over-riding power of legislation for the discharge of all functions which it will have to perform. It should be enabled under this power to intervene in any province for the protection and enforcement of the interests for which it is responsible; to legislate on any provincial matter in respect of which uniformity of legislation is desirable either for the whole of India or for any two or more provinces. . . . We think that the Government of India must be the

The Government of India Act provides for the classification of subjects, in relation to the functions of Government, as central and provincial, and also for the transfer, from among the provincial subjects, of subjects (to be referred to as 'Transferred subjects') to the administration of the Governor acting with Ministers. Nevertheless, as we have established before,[1] our Constitution is not yet federal. In a completely developed federal constitution like that of the United States of America, the Courts act as the 'interpreters of the Constitution'[2] and as the guardians of the rights and privileges of the national Government as well as of the component States of the Union. Our Constitution being still 'unitarian' in character, Section 84 of the Act above provides against the interference by a court of law in the settlement of any dispute as to whether a particular matter does or does not relate to a provincial subject. The Section also provides against similar interference in the decision of a question as to whether a certain matter relates to a Reserved or to a Transferred subject

sole judge of the propriety of any legislation which it may undertake under any one of these categories, and that its competence so to legislate should not be open to challenge in the courts. . . . There are advantages in a statutory demarcation of power such as is found in some federal constitutions, but we feel that if this is to leave the validity of Acts to be challenged in the courts on the ground of their being in excess of the powers of the particular legislature by which they are passed, we should be subjecting every Government in the country to an almost intolerable harassment. Moreover, in India where the central Government must retain large responsibilities, as for defence and law and order, a statutory limitation upon its legislative functions may be inexpedient. . . . We think therefore that it may be better, instead of attempting to bar the legislative power of the Government of India in certain spheres of provincial business, to leave it to be settled as a matter of constitutional practice that the central Government will not interfere in provincial matters unless the interests for which it is itself responsible are directly affected.'—*The Montagu-Chelmsford Report*, para. 212. See also para. 239 of the Report.

[1] Pages 6–9 *ante*.

[2] Dicey, *Law of the Constitution* (eighth edition), p. 140.

The decision of such controversial matters has been left by the Act to the Executive, lest the course of administration should be held up in any way. Under the Devolution Rules if any doubt arises as to—

(1) whether a particular matter does or does not relate to a provincial subject, the decision of the Governor-General in Council thereon will be final;[1] or

(2) whether any matter relates to a Reserved or to a Transferred subject, the decision of the Governor thereon will be final.[2]

[1] Devolution Rule 4.

[2] *Ibid.*, Rule 7

CHAPTER XV

PROCEDURE IN THE INDIAN LEGISLATURE

Rules and Standing Orders for regulating business in the Indian legislatures—Summoning of the Legislative Assembly and the Council of State—Prorogation—Adjournment—Time of meetings—Quorum—Language in the Indian Legislature—Motions—Voting—Repetition of motions—Rules as to amendments—Decision of points of order—Power to order withdrawal—Admission of strangers—Closure—Arrangement of business—List of business—Questions—Subject-matter of questions—Form and contents of Questions—Motions for adjournment for purposes of debate—Resolutions—Form and contents of resolutions—Their effect.

There must be in every deliberative assembly some rules for the conduct of its business, for the preservation of order within it and for the prevention of waste of its time. If every member of such an assembly were free to do whatever he liked, the assembly would soon cease to be a peaceful law-making body and would lapse into a state of disorder and confusion. As Dr. Leacock[1] says, 'any large gathering which acts at haphazard and without formal rules is liable to become a mere babel of tongues.' Generally speaking, every such assembly adopts its own rules of procedure. Not to speak of the legislatures of independent countries, the Parliaments of the self-governing dominions like Australia and the Union of South Africa have power 'to make rules and orders with respect to the order and conduct of their business and proceedings.'[2] The position

[1] *Elements of Political Science*, p. 148.

[2] The Commonwealth of Australia Constitution Act 1900, Section 50; South Africa Act, 1909, Section 58.

in India is somewhat different. The Government of India Act has authorized Rules and Standing Orders to be made for the regulation of the course of business and for the preservation of order in the two Chambers of the Indian Legislature and in Governors' Legislative Councils.[1] Accordingly, Rules have been made by the Governor-General in Council with the sanction of the Secretary of State in Council in the form approved by both Houses of Parliament.[2] This is the procedure provided by the Act for the framing of such Rules. These Rules cannot be repealed or altered by the Indian Legislature or by any local legislature.[3] The first Standing Orders have been made, as provided by the Act,[4] by the Governor-General in Council in the case of the Indian Legislature, and by the Governor in Council in the case of a local legislature; they may, unlike the Rules, be altered by the legislative body to which they relate with the consent of the Governor-General or the Governor, as the case may be. If any Standing Order is repugnant to the provisions of any Rule made under the Act, it must, to the extent of that repugnancy, be void.[5]

Rules and Standing Orders for regulating business in Indian legislatures.

Let us first discuss the procedure of business in the two Chambers of the Indian Legislature before we pass on to Governors' Legislative Councils.

PROCEDURE IN THE INDIAN LEGISLATURE

The Governor-General appoints by notification the date and place for a session of each Chamber of the Indian

[1] Sections 67 (1) and 72D (5) of the Act.
[2] Government of India Notifications Nos. 121–29, Legislative Department; *The Gazette of India* (Extra.), September 27, 1920.
[3] Section 129A (1) of the Act.
[4] Sections 67 (6) and 72D (7) of the Act.
[5] *Ibid.*

Legislature.[1] The Secretary[2] of each Chamber issues a summons to every member thereof for the date and place thus appointed.[3] After the commencement of a session, each House sits on such days as its President, having regard to the state of its business, directs from time to time.[4] A session of either House is brought to a close by prorogation which is effected by the Governor-General by notification or otherwise.[5] On the termination of a session by prorogation all pending notices lapse, and fresh notices must be given for the next session.[6] But Bills which have already been introduced are carried over to the pending list of business of the next session and begin their progress again at the point they have already reached.[7] Thus the Indian practice avoids that unfortunate necessity of the 'slaughter of the innocents,'[8] which is generally the effect of a prorogation of a session of Parliament in England. But if the member in charge of a Bill makes no motion with regard to it during two complete sessions, it will lapse unless the House, in which the Bill has been introduced, makes, on a motion by that member in the next session, a special order for its continuance.[9] But on the dissolution of either House all Bills which have been introduced into the House which has been dissolved, or which have been sent to that House

Summoning of the Assembly and the Council.

Prorogation.

[1] Section 63D (2) of the Act and the Legislative Assembly and the Council of State Standing Order 3(1).

[2] The Secretary and his assistants are appointed by the Governor-General and hold office during his pleasure.

[3] The Legislative Assembly and the Council of State Standing Order 3 (2).

[4] *Ibid.*, 3 (3).

[5] Section 63D (2) of the Act.

[6] The Legislative Assembly and the Council of State Standing Order 4 (1).

[7] *Ibid.*, 4 (2).

[8] Lowell, *Government of England*, vol. i, p. 247.

[9] The Legislative Assembly and the Council of State Standing Order 4 (Proviso).

after being passed by the other House but which have not yet been passed by the Indian Legislature, must lapse. A meeting of each House is adjourned by its President.[1] An adjournment only suspends the transaction of current business.

Adjournment.

Time of meetings.

Ordinarily, each Chamber meets at 11 a.m. and sits till 4 p.m., unless the Governor-General otherwise directs.[2]

Quorum.

The presence of at least twenty-five members is necessary to constitute a quorum in the case of the Legislative Assembly, and of at least fifteen members, in the case of the Council of State.[3] Neither House can transact any business unless there is a quorum in it. If the President of either House ascertains on a count at any time during a meeting, that a quorum is not present, he must adjourn the House until the next day of sitting.[4] The members of each House must sit in such order as its President may direct.

Seating of members.

Members to rise when speaking.

A member desiring to make any observation on any matter before the House must speak from his place, rise when he speaks, and address the President. Whenever the President rises, any member speaking must resume his seat.[5] If, for the purpose of explanation during discussion or for any other sufficient reason, any member has occasion to ask a question of another member on any matter then under the consideration of the House, he must ask the question through the President.[6]

Explanation.

[1] Section 63D (3) of the Act.

[2] The Legislative Assembly Standing Order 6 and the Council of State Standing Order 5.

[3] Indian Legislative Rule 13.

[4] L. A. S. O. 25 and C. S. S.O. 24. But no demand for a count to ascertain the presence of a quorum can be made within one hour of any previous count.

[5] *Ibid.*, 27 and *ibid.*, 26.

[6] *Ibid.*, 28 and *ibid.*, 27.

Language in the Indian Legislature.

The business of each Chamber of the Indian Legislature is to be transacted in English; but the President thereof may permit any of its members unacquainted with English to address the Chamber in a vernacular language.[1]

Motions.

If any matter requires the decision of either House, it must be brought forward by means of a question put by the President on a motion proposed by a member.[2] All questions are determined by a majority of votes of the members present other than the person presiding, who, however, has and must exercise a casting vote in the case of an equality of votes.[3]

Voting.

Votes are taken by voices or division.[4] The procedure adopted is as follows: When the President states the question to be voted upon, those members who are in favour of it say 'aye' and those against, say 'no'. According to the apparent preponderance of voices he declares whether the 'ayes' or 'noes' 'have it'. If, however, his opinion is challenged and a division is wanted by any member, he orders a division. The result of the division is then announced by the President and is not open to further challenge.[5]

Repetition of motions.

A motion in either House must not raise a question substantially identical with one on which the House has given

[1] Indian Legislative Rule 14.

[2] The Legislative Assembly Standing Order 30 (1) and the Council of State Standing Order 29 (1).—For instance:
'Mr. President: The question is:
'That the clause, as amended, do stand part of the Bill.'
The motion then is either adopted or negatived.

[3] Section 63D (4) of the Act. See pages 33–34 in this connexion.

[4] The Legislative Assembly Standing Order 30 (2) and the Council of State Standing Order 29 (2). Votes must be taken by division if any member so desires. This is the case also in Bengal.

[5] The Legislative Assembly Standing Order 30 (3) and the Council of State Standing Order 29 (3). Vide *The Bengal Legislative Council Manual*, 1927, p. 317, for the method of taking votes by division in Bengal.

a decision in the same session.[1] An amendment must be relevant to, and within the scope of, the motion to which it is moved.[2] It is not in order if it has merely the effect of a negative vote.[3] Besides, an amendment on a question must not be inconsistent with a previous decision on the same question at the same stage of any Bill or other matter.[4] The President can refuse to put an amendment which he considers frivolous.[5]

Rules as to amendments.

After the member who makes a motion has finished his speech, other members may speak to it in such order as the President may call upon them.[6] Except in the exercise of a right of reply or as otherwise provided by the Rules or Standing Orders, no member can speak more than once to any motion.[7] But, with the permission of the President, he may offer a personal explanation which will not raise any debatable issue.[8] A member who has moved a motion may speak again by way of reply, and if the motion is moved by a non-official member, the Member of the Government to whose department the motion relates has the right of speaking (whether he has previously spoken in the debate or not), after the mover has replied.[9] The President of either House may address the House before submitting a question to its vote.[10]

All points of order are decided by the President and his decision is final.[11] A member may at any time submit a point of order for his decision, but in doing so he must confine himself to stating the point only.[12]

Decision of points of order.

[1] Legislative Assembly Standing Order 31 and Council of State Standing Order 30.
[2] *Ibid.*, 33 and *ibid.*, 32.
[3] *Ibid.*
[4] *Ibid.*
[5] *Ibid.*
[6] L. A. S. O. 32 and C. S. S. O. 31.
[7] *Ibid.*
[8] *Ibid.*
[9] *Ibid.*
[10] *Ibid.*
[11] Indian Legislative Rule 15. See App. v in this connexion.
[12] *Ibid.*

It is the duty of the President of either House to preserve order.[1] He has all powers necessary for the purpose of enforcing his decisions on all points of order.[2] He may direct any member whose conduct is in his opinion grossly disorderly to withdraw immediately from the House to which he belongs, and any member so directed to withdraw must do so forthwith and must absent himself during the remainder of the day's meeting.[3] If a member is ordered to withdraw a second time in the same session, he may be directed by the President to absent himself from the meetings of the House for any period not longer than the remainder of the session, and such direction must be obeyed.[4] The President of either House may, in the case of grave disorder, suspend its sitting for a time fixed by him.[5]

Power to order withdrawal.

The admission of visitors to the Visitors' gallery, of representatives of the Press to the Press gallery, and of officials to the Official gallery, in each Chamber during its sittings, is regulated in accordance with orders made by the President thereof with the approval of the Governor-General.[6] The President may, whenever he thinks fit, order the Visitors' or Press gallery in it to be cleared.[7]

Admission of strangers.

President Lowell says that almost all great legislative bodies at the present day have been forced to adopt some method of cutting off debate, and bringing matters under discussion to a decisive vote.[8] They have been driven, he continues, to do so partly as a

Closure.

[1] Indian Legislative Rule 17 (1).
[2] *Ibid.*
[3] *Ibid.*, 17 (2).
[4] *Ibid.*
[5] *Ibid.*, 17 (3).
[6] The Legislative Assembly Standing Order 35 and the Council of State Standing Order 34.
[7] *Ibid.*, 36 and *ibid.*, 35.
[8] Lowell, *Government of England*, vol. i, p. 292.

defence against wilful obstruction by minorities, and partly as a means of getting through their work.[1] The mode of procedure adopted to achieve this end is known as closure. Recourse to this process is had in the Indian Legislature (as well as in our local legislatures). At any time after a motion has been made, any member may move 'that the question be now put', and, unless it appears to the President that the request is an abuse of the Rules or Standing Orders of the House, or an infringement of the rights of reasonable debate, the motion 'that the question be now put' must be put without amendment or debate.[2] If such a motion is carried, the original question, the debate on which has thus been terminated, must be put without further amendment or debate.[3] But in the case of a motion relating to an official[4] Bill, there is a further provision. At any time after such a motion has been made, the Member in charge of the Bill may request the President to put the question, and unless it appears to the President that the request is an abuse of the Rules or Standing Orders of the House, or an infringement of the rights of reasonable debate, the question must be put without amendment or debate.[5] A closure may be moved at the conclusion of a speech, or while a member is addressing the House.

It need not, perhaps, be pointed out that the discretion left to the Chair as to when a motion for the closure should be allowed is a great safeguard against the infringement

[1] Lowell, *Government of England*, vol. i, p. 292.

[2] The Legislative Assembly Standing Order 34 and the Council of State Standing Order 33.

[3] Provided that the President may allow any member any right of reply which he may have under the Standing Orders of the House.

[4] And also in the case of a motion relating to a Bill relating to a Reserved subject in the provincial legislature. This, however, is not the case in Bombay.

[5] But the proviso stated in footnote 3 above will also apply to this case. The Legislative Assembly Standing Order 34 and the Council of State Standing Order 33.

of the rights of minorities. To no small extent does the proper consideration of a question depend upon an impartial exercise of this discretion; since, the House itself will seldom reject a closure motion if it gets a chance to vote upon it.

Arrangement of Business.

The Governor-General, after considering the state of business of each House, allots, at the beginning of each session, as many days as are in his opinion possible, compatibly with the public interests, for the business of non-official members in the House. He may allot different days for the disposal of different classes of such business, and, on days so allotted for any particular class of business, business for that class has precedence. On other days no business other than Government busines can be transacted except with the consent of the Governor-General in Council.[1]

On days allotted for the transaction of official business, the Secretary of each House arranges that business in such order as the Governor-General in Council may direct.[2] The relative precedence of notices of Bills and resolutions given by non-official members of either House is determined by ballot held in the presence of the Secretary of the House.[3] Any member may attend at the time of the ballot if he wishes to do so.[4] Bills introduced by non-official members, which have reached certain stages in their progress, are arranged in such order as to give priority to the Bills which are most advanced.[5] The

[1] Indian Legislative Rule 6.

[2] The Legislative Assembly Standing Order 7 and the Council of State Standing Order 6.

[3] The ballot, in the case of the Assembly only, is held on such day, not being less than fifteen days before the day with reference to which the ballot is held, as the President may direct.

Legislative Assembly Standing Order 7A and 7B and Council of State Standing Order 6. See App. P in this connexion.

[4] *Ibid.*, Schedule I.

[5] For further details, see the Legislative Assembly Standing Order 7A and 7B and also the Council of State Standing Order 6.

relative precedence of the other non-official Bills which have been introduced, but which have not yet reached those stages, is determined by ballot.[1] If, however, any such Bills stand over from the last session, they will have priority in the order of their date of introduction.[2]

List of business. A list of business for each day is prepared by the Secretary of each House, and a copy of it is given to every member.[3] Except as otherwise provided in the Rules or Standing Orders of the House, no business other than that included in the list is to be transacted at any meeting without the permission of the President.[4] Any business, in the case of the Council of State, not disposed of on the day is to stand over till the next day of the session available for the business of the class to which it belongs, or till such other day in the session so available as the Member in charge may desire; but non-official business so standing over will have no priority on such day unless it has been commenced, in which case it will have priority over non-official business fixed for that date[5]. In the case of the Assembly, non-official business set down for any day and not disposed of on that day cannot be set down for any subsequent day, unless it has gained priority at the ballot held with reference to that date. But any such business which has been commenced must be set down for the next date allotted to business of that class, and will have precedence over all other business set down for that date.[6] Every notice required by the Rules or Standing Orders of either House must be given in writing addressed to the Secretary.[7] It is the duty of the Secretary to circulate

[1] For further details, see the Legislative Assembly Standing Order 7A and 7B and also the Council of State Standing Order 6.

[2] *Ibid.*

[3] Legislative Assembly Standing Order 8 and Council of State Standing Order 7.

[4] *Ibid.*

[5] Council of State Standing Order 8.

[6] L. A. S. O. 9.

[7] Legislative Assembly Standing Order 11 and Council of State Standing Order 10.

to each member of the House a copy of every notice or other paper which is required to be made available for the use of members.[1]

We have hitherto confined ourselves to the statement of the general rules of procedure in the two Chambers of the Indian Legislature. We shall now attempt to show how the Legislature criticizes and controls the actions of the Central Government by means of questions and discussions, how it makes laws, and, lastly, how it grants supplies to that Government in order to enable it to meet a portion of its expenditure.

Questions.

The first hour of every meeting of either Chamber is available for the asking and answering of questions.[2] Any member may address a question to any Member of the Government for the purpose of obtaining information on a matter of public concern within the special cognizance of the latter.[3] The question must relate to the public affairs with which the latter is officially connected, or to a matter of administration for which he is responsible.[4] A question addressed to a non-official member must relate to some Bill, resolution or other matter connected with the business of the Chamber, for which he is responsible.[5] The right of asking questions was first conceded by the Indian Councils Act of 1892. This right was enlarged by the Indian Councils Act of 1909, by allowing the member who put the original question to ask a supplementary one. Under the existing Rules, unless the President, with the consent of the Government Member whose department is concerned, otherwise directs, not less

[1] Legislative Assembly Standing Order 12 and Council of State Standing Order 11.
[2] *Ibid.*, 10 and *ibid.*, 9.
[3] Indian Legislative Rule 8.
[4] Legislative Assembly Standing Order 14 and Council of State Standing Order 13.
[5] *Ibid.*

than ten clear days' notice of a question must be given.[1] This enables the Member to prepare his answer. In the British House of Commons one day's notice is sufficient except in special cases.[2] The President may, within the period of notice, disallow any question or any part of it on the ground that it relates to a matter which is not primarily the concern of the Governor-General in Council.[3]

Subject-matter of questions.

No question can be asked with regard to any of the following subjects,[4] namely :—

(1) any matter affecting the relations of His Majesty's Government, or of the Governor-General in Council, with any foreign State ;

(2) any matter affecting the relations of any of the foregoing authorities with any Prince or Chief under the suzerainty of His Majesty, or relating to the affairs of any such Prince or Chief or to the administration of the territory of any such Prince or Chief ; and

(3) any matter which is under adjudication by a Court of Law having jurisdiction in any part of His Majesty's Dominions.

If any doubt arises whether any question does or does not come within these restrictions, the decision of the Governor-General thereon is final.

Form and contents of questions.

In matters which are or have been the subject of controversy between the Governor-General in Council and the Secretary of State or a local Government, no question can be asked except as to matters of fact[5], and the answer must be

[1] Legislative Assembly Standing Order 13 and Council of State Standing Order 12.

[2] Ilbert, *Parliament*, p. 112.

[3] Indian Legislative Rule 7.

[4] *Ibid.*, 8.

[5] 'A question is a demand for information. It may sometimes be used for a purpose beyond that simple request ; but, if it is so used, it must be with care : for, it is obvious that a point soon arrives where the cross-examination of a minister becomes a debate and thus

confined to a statement of facts.[1] A question cannot bring in any name or statement not strictly necessary to make it intelligible;[2] nor should it contain arguments, inferences, ironical expressions or defamatory statements, or ask for an expression of opinion or the solution of a hypothetical proposition.[3] Nor can any question be asked regarding the character or conduct of any person except in his official or public capacity.[4] If a question contains a statement by the member himself, he must make himself responsible for the accuracy of the statement.[5] Finally, it must not be of excessive length.[6] The President of either House is to decide whether any question is admissible or not under the Rules or Standing Orders of the House.[7] He may disallow any question if, in his opinion, it is an abuse of the right of questioning or calculated to obstruct or prejudicially affect the procedure of the House.[8]

If a question, the notice of which has been given, is not put or the member in whose name it stands is absent, the President, at the request of any member, may direct that the answer to it be given, presumably on the ground of public interest.[9] On the same ground an answer to a question may be declined. Questions must be

passes beyond the bounds of order'.—Statement by the President of the Assembly on September 1, 1921.—*India's Parliament*, vol. ii, p. 5.

[1] Indian Legislative Rule 9; see also in this connection a statement by the President of the Assembly in *India's Parliament*, vol. ii, pp. 5–8.

[2] Legislative Assembly Standing Order 15 and Council of State Standing Order 14.

[3] *Ibid.* A question cannot insinuate that members of Government often act in bad faith in the answers which they give.—*India's Parliament*, vol. ii, p. 6.

[4] *Ibid.*

[5] *Ibid.*

[6] Legislative Assembly Standing Order 15 and Council of State Standing Order 14.

[7] *Ibid.*, 16 and *ibid.*, 15.

[8] *Ibid.*

[9] L. A. S. O. 19 and C. S. S. O. 18.

put and answers given in such manner as the President may determine.[1]

Any member may put a supplementary question for the purpose of further elucidating any matter of fact regarding which an answer has been given,[2] but the President may disallow any supplementary question if, in his opinion, it infringes the Rules relating to the subject-matter of questions.[3] In the case of a supplementary question, the member to whom it is addressed may demand previous notice 'that a proper answer may be given.' No discussion is permitted in respect of any question or of any answer given to a question,[4] and in this respect the Indian practice differs from the French custom of 'interpellations'.

As Mr. Lowell[5] points out in another connection, questions may be asked from various motives: sometimes they are asked by a member simply to obtain information; sometimes to draw public attention to a grievance; sometimes to embarrass the Government; and sometimes with a view to showing 'to his constituents the attention which he

[1] Legislative Assembly Standing Order 18 and Council of State Standing Order 17.

The procedure in the Assembly is as follows:—

Any member who desires an oral answer must place a star against his question when he gives notice of it. If any question is not so marked with a star, it is not answered orally, but is printed, with its answer, in the official report of the business of the day. 'Supplementary questions, therefore, cannot arise out of the answers to unstarred questions'.—Statement by the President of the Assembly on the 'procedure in regard to question and answer'; *vide India's Parliament*, vol. ii, p. 7.

(In the Bengal Legislative Council also, questions marked with asterisks are answered orally. Answers to unstarred questions are printed and laid on the table, and copies thereof are furnished to the questioners. A supplementary question can be put there in the case of an unstarred question).

[2] Indian Legislative Rule 10; see also the foot-note above.

[3] *Ibid.* See pages 241–42 *ante*.

[4] Legislative Assembly Standing Order 20 and Council of State Standing Order 19.

[5] Lowell, *Government of England*, vol. i, p. 332.

devotes to public affairs and to their special interests.' Though the right to ask questions is liable to abuse and its exercise may sometimes cause unnecessary waste of time, the usefulness of this right, however, cannot be questioned. What Sir Courtenay Ilbert[1] says in connection with the English custom of questioning, is no less applicable to the Indian practice. According to him, 'there is no more valuable safeguard against maladministration, no more effective method of bringing the searchlight of criticism to bear on the action or inaction of the executive government and its subordinates. A minister has to be constantly asking himself, not merely whether his proceedings and the proceedings of those for whom he is responsible are legally or technically defensible, but what kind of answer he can give if questioned about them in the house (of commons or lords), and how that answer will be received '.

Motions for adjournment for purposes of debate.

While asking questions in itself affords no opportunity for passing judgment upon the actions of the Government, a 'motion for adjournment,' on the other hand, furnishes a means by which any act or omission by any department of the Government may be criticized and even censured. A member of either House may move, with the consent of the President, a motion for the adjournment of the House for the purpose of discussing a definite matter of urgent public importance.[2] Leave to make such a motion can be asked for after questions have been disposed of and before the list of business for the day is taken up for consideration.[3] The member asking for such leave must, before the commencement of the sitting of the day, leave

[1] Ilbert, *Parliament*, p. 113.
[2] Indian Legislative Rule 11.
[3] Legislative Assembly Standing Order 21 and Council of State Standing Order 20.

with the Secretary of the House a written statement of the matter he proposes to discuss.[1]

This right to move an adjournment of either House is subject, however, to the following restrictions,[2] namely :—

(1) not more than one such motion can be made at the same sitting of the House ;

(2) not more than one matter can be discussed on the same motion, and the motion itself must be restricted to a specific matter of recent occurrence ;

(3) the motion must not revive discussion on a subject which has been considered in the same session ;

(4) the motion must not anticipate a matter already appointed for consideration, or in reference to which a notice of motion has been previously given ; and

(5) the motion must not deal with a subject on which a resolution could not be moved.

In the British House of Commons the Speaker may decline to submit a motion for adjournment to the House if, in his opinion, the subject to be brought forward is not definite, urgent, or of public importance.[3] Such power is also vested in the President of either Chamber of the Indian Legislature. He too must first be satisfied about the definiteness,[4] urgency[5] and public importance of the subject to be discussed on a motion for an adjournment before he will agree to submit the motion to the Chamber.[6]

[1] Legislative Assembly Standing Order 22 and Council of State Standing Order 21.

[2] Indian Legislative Rule 12.

[3] May, *Parliamentary Practice*, p. 227.

[4] See the President's Ruling in the Assembly, January 10, 1922 ; *Legislative Assembly Debates*, vol. ii, No. 13, p. 1453.

[5] *Legislative Assembly Debates*, March 14, 1922 ; pp. 3016 and 3017.

[6] On September 4, 1928, the President of the Assembly gave a further ruling regarding the admissibility of a motion for adjournment:—

'Generally speaking, motions for adjournment . . . must have some relation, directly or indirectly, to the conduct or default on the part of Government and must be in the nature of criticism of the

If, however, he is of opinion that the matter proposed to be discussed is in order, he reads the statement previously supplied to the Secretary to the Chamber and asks if the member desiring the adjournment has the leave of the Chamber to move the adjournment. If the leave is given unanimously, or if, when the President, in the case of an objection, requests those members who are in favour of leave being granted to rise in their places, not less than twenty-five members in the case of the Assembly and not less than fifteen in the case of the Council of State rise accordingly, the President declares that leave is granted and that the motion will be taken up at 4 p.m. or, if the President, with the consent of the Member of Government concerned so directs, at an earlier hour at which the business of the day may terminate.[1] If however, less than the minimum number in each case rise, the President informs the member that leave has not been granted.[2] On a motion to adjourn for the purpose of discussing a definite matter of urgent public importance the only question that may be put is 'That the Assembly, or the Council, do now adjourn.'[3] If this motion is carried, it amounts, according to constitutional practice, to a vote of censure[4] upon the Government. If, however, the debate is not concluded by 6 p.m. in the case of the Assembly and within two hours in the case of the Council of State, it must automatically terminate and no question can be put.[5] No

action of Government. I am quite clear about that, and I am supported by the Parliamentary precedents in that respect.'—*Vide Legislative Assembly Debates*, September 4, 1928, pp. 152–54.

[1] *Legislative Assembly Proceedings*, pp. 3791–92. Also Legislative Assembly Standing Order 23 and Council of State Standing Order 22.

[2] Legislative Assembly Standing Order 23 and Council of State Standing Order 22.

[3] *Ibid.*, 24 and *ibid.*, 23.

[4] Generally speaking, it is so. (See foot note 6 on page 245). This is also the case in the British House of Commons.

[5] Legislative Assembly Standing Order 24 and Council of State Standing Order 23.

member can speak during the debate for more than fifteen minutes.

The Governor-General may disallow any such motion for adjournment as has just been described, on the ground that it cannot be moved without detriment to the public interest or on the ground that it relates to a matter which is not primarily the concern of the Governor-General in Council.[1]

As the procedure to be followed in the case of a motion for adjournment is rather difficult of clear comprehension, we propose to describe below, by way of illustration, a typical case taken from the proceedings[2] of the Legislative Assembly, dated March 28, 1922:—

Mr. K. B. L. Agnihotri (Central Provinces Hindi Division: non-Muhammadan): Sir, I rise to ask for your leave for moving an adjournment of the business of the Assembly to-day for the purpose of discussing a definite matter of urgent public importance, namely, the conduct of the Deputy Commissioner of Delhi in prohibiting a public open air meeting which was to have been held on the 23rd of March, 1922, to consider the Khilafat question, etc. . . .

The Honourable Sir William Vincent (Home Member): I make a formal objection merely to ascertain whether the House or a sufficient number of the members wish to discuss it. . . .

Mr. President: Objection having been taken, I am to request those members who are in favour of leave being given, to rise in their places. . . . Not less than twenty-five members having risen, the debate will be set down for four o'clock this afternoon or for any earlier hour at which our proceedings terminate.

The motion was ultimately set down by the President for four o'clock unless the Home Member found himself in a

[1] Indian Legislative Rule 22 (2).

[2] *Legislative Assembly Debates*, March 28, 1922, pp. 3790–91 and 3834–39.

position to take it earlier, if the business of the Assembly had terminated at an earlier hour. This incident took place just after questions had been disposed of and before the list of business for the 28th of March, 1922, was entered upon. Later:

Mr. K. B. L. Agnihotri (at 4 p.m.): I want to move for an adjournment of the business of the Assembly for the purpose of considering a definite matter of urgent public importance, namely, the conduct of the Deputy Commissioner of Delhi in prohibiting a public open air meeting etc. . . .

Mr. Agnihotri then made a long speech condemning 'the action and conduct of the Deputy Commissioner of Delhi.' In his peroration he exhorted the Assembly to support him and pass a vote of censure on the Deputy Commissioner. He was followed by other speakers who either supported or condemned the action taken by the Deputy Commissioner.

Several members wanted then the question to be put and it was thus put:—

Mr. President: The question is:

'That this House do now adjourn.'

The Assembly then divided as follows:

Ayes—29 and Noes—34.

The motion was therefore negatived. Had it been adopted, it would have amounted to a vote of censure upon the conduct of the Deputy Commissioner and also upon the Government which supported him.

Resolutions.

Besides motions for adjournment, resolutions[1] afford opportunities to members of criticizing the acts or omissions of the Government. Sometimes a resolution is moved by a member in order to

[1] There were as many as 122 resolutions moved in the first Council of State, of which 101 were private and 21 official; and the total number of resolutions moved in the first Legislative Assembly was 137, of which 114 were private and 23 official.—*Work of the Indian*

bring forward 'a favourite project of his own,' which may not have any connection with politics. It may be moved, for instance, in the form of a request to the Government to do or forbear from doing a certain act. The right to move resolutions on the budget and on all other matters of general public importance was for the first time conceded by the Indian Councils Act, 1909. Under the existing Rules and Standing Orders any member of either Chamber of the Indian Legislature may move a resolution relating to a matter of general public interest.[1] It must be clearly and precisely expressed and must raise substantially one definite issue.[2] Besides, it must not contain arguments, inferences, ironical expressions or defamatory statements,[3] nor should it refer to the conduct or character of persons except in their official or public capacity.[4] There are the same restrictions imposed regarding the subject-matter of a resolution as we have seen in the case of a question.[5] The Governor-General is to decide as to whether a particular resolution does or does not come within the scope of those restrictions, and his decision thereon is final.[6] Every resolution must be in the form of a specific recommendation to the Governor-General in Council.[7] The President of either House is to decide on the admissibility of a resolution.[8]

Form and contents of resolutions.

A member desiring to move a resolution must, unless the President, with the consent of the Member of the Government to whose department the resolution relates,

Legislatures, compiled under the order of the National Conference, pp. 12 and 24.
These resolutions related to various subjects.

[1] Legislative Assembly Standing Order 59 and Council of State Standing Order 58.

[2] *Ibid.*

[3] *Ibid.*

[4] *Ibid.*

[5] See p. 241 *ante*.

[6] Indian Legislative Rule 23.

[7] *Ibid.*

[8] Legislative Assembly Standing Order 60 and Council of State Standing Order 59.

shortens the period, give fifteen clear days' notice of his intention to do so, and submit, along with the notice, a copy of the resolution he wishes to move.[1] The Governor-General, however, may, within the period of notice, disallow any resolution or any part of it, on the ground that it cannot be moved without detriment to the public interest, or on the ground that it relates to a matter which is not primarily the concern of the Governor-General in Council.[2] A member in whose name a resolution stands on the list of business must, when called on, either withdraw it or move it; in the latter case, he must begin his speech by a formal motion.[3] If, however, he is found absent, the resolution standing in his name will be deemed to have been withdrawn, except when, in the case of the Assembly *only*, any other member, duly authorized by him in writing, moves the resolution with the permission of the President.[4] Except with the permission of the President, no member can speak on a resolution for more than fifteen minutes. But there are two exceptions to this rule: The mover of a resolution, when moving it, and the Member of the Government to whose department the resolution relates, when speaking for the first time, may speak for thirty minutes.[5] If a resolution, or an amendment to a resolution, has been moved in either Chamber, it cannot be withdrawn except with the leave of the Chamber.[6] No discussion is allowed on a motion for leave to withdraw a resolution except with the permission of the President of the Chamber.[7] After a resolution has been moved, any member may, subject to the Rules and Standing Orders relating to

[1] Legislative Assembly Standing Order 58 and Council of State Standing Order 57.

[2] Indian Legislative Rule 22 (1).

[3] Legislative Assembly Standing Order 61 and Council of State Standing Order 60.

[4] *Ibid.*

[5] Or, in the case of the Assembly only, for such longer time as the President may permit.

[6] L. A. S. O. 66 and C. S. S. O. 65.

[7] *Ibid.*

resolutions, move an amendment to the same.[1] The discussion of a resolution must be strictly confined to its subject-matter. If a resolution which has been admitted is not discussed during a session, it will be supposed to have been withdrawn.[2] If a resolution has been moved, no resolution or amendment raising substantially the same question can be moved within one year.[3] Similarly, if a resolution is disallowed or withdrawn, no other resolution raising substantially the same issue can be moved during the same session.[4] A copy of every resolution passed by either House is forwarded to the Governor-General in Council; but any such resolution will be regarded as a mere recommendation to him.[5] He will deal with it 'as carefully, or as carelessly as he thinks fit'. A resolution, unlike a law, is not binding upon the executive Government.

Effect of resolutions.

Save in so far as is otherwise provided by the Act or Rules made thereunder, no discussion of a matter of general public interest can take place by means of a motion otherwise than on a resolution duly moved except with the consent of the President and of the Member of the Government to whose department the motion relates. All such motions are subject to the same restrictions as resolutions. The Governor-General may disallow any motion or part of a motion on the ground that it cannot be moved without detriment to the public interest or on the ground that it relates to a matter which is not primarily the concern of the Governor-General in Council.[6]

Discussion of matters of general public interest otherwise than on a resolution.

[1] Legislative Assembly Standing Order 64 and Council of State Standing Order 63.
[2] *Ibid.*, 69 and *ibid.*, 68.
[3] *Ibid.*, 70 and *ibid.*, 69.
[4] *Ibid.*, 70 and *ibid.*, 69.
[5] Indian Legislative Rule 24.
[6] *Ibid.*, 24A.

CHAPTER XVI

PROCEDURE IN THE INDIAN LEGISLATURE—(*Continued*)

Committees of the Indian Legislature—Select Committees—Composition of Select Committees—Joint Committee of both Houses—Committee on Petitions—Committee on Public Accounts—Procedure for legislation—Introduction of a Bill—Motions after introduction—Reference to a Select Committee—Procedure after presentation of report—Proposal of amendments—Passing of a Bill—Withdrawal of a Bill—Reconsideration of a Bill—Procedure regarding legislation in both Houses—Conference for discussing a difference of opinion between two Houses—How supplies are granted—Excess grants—Supplementary grants—Duty of the Committee on Public Accounts—Communications between the Governor-General and either Chamber of the Indian Legislature.

Committees of the Indian Legislature.

A modern representative assembly has to do so much work that it is not possible for it to do everything in full meeting. It has, as has been remarked by President Lowell in another connection,[1] neither the time, nor the patience nor the requisite knowledge for the various functions it has got to discharge. The instruments that it employs to help it in its work of deliberation and legislation are committees of some kind appointed by itself. Our Indian Legislature is not an exception to this general practice. There are the Select Committee, Joint Committee, Committee on Petitions relating to Bills and the Public Accounts Committee to help it in its work.[2]

A Select Committee may be appointed by either House of the Indian Legislature to consider some special matter

[1] *Government of England*, p. 264.

[2] For the Standing Committees of the Indian Legislature, see Appendix J.

that may be referred to it—either a Bill or a proposal to amend a Standing Order or some other subject about which the House wishes to institute an inquiry. When a particular Bill is referred to a Select Committee it may hear expert evidence and representatives of special interests affected by the bill.

Select Committees.

Composition of Select Committees.

The composition of Select Committees is not based upon any uniform principle; they are differently constituted to serve different purposes. In the case of a Select Committee[1] appointed by either House to consider a Bill, the Member of the Government[2] to whose department the Bill relates, the member who has introduced it and the Law Member of the Governor-General's Executive Council, if he is a member of the House, must be members thereof. The other members of the Committee are appointed by the House. But if the Law Member is not a member of the House, then the Deputy President or one of the Chairmen in the case of the Assembly and one of the Chairmen in the case of the Council must be appointed a member of the Committee.

The Chairman of a Select Committee appointed by either House to consider a Bill.

In the case of a Select Committee appointed by the Assembly to consider a Bill, the Law Member or, if the Law Member is not a member of the House, the Deputy President if he is a member of the Committee, and if the Deputy President is not a member of the Committee, then a Chairman of the Assembly must be the Chairman of the Committee; and if two or more Chairmen of the Assembly happen to be members of the Committee, then the person whose name stands first in

[1] Legislative Assembly Standing Order 40 and Council of State Standing Order 39.

[2] ' "Member of the Government" means here a Member of the Governor-General's Executive Council, and includes any member to whom such Member may delegate any function assigned to him under the Rules or Standing Orders' of the House.

the panel of such Chairmen is to be its Chairman. Similarly, in the case of a Select Committee of the Council, the Law Member or, if he is not a member of the Council, a Chairman of the Council must be its Chairman; and if two or more Chairmen of the Council are members of the Committee, then the person whose name appears first in the panel of such Chairmen is to be its Chairman. In the case of an equality of votes, the Chairman has a second or casting vote.

If the Law Member or the Member of the Governor-General's Executive Council in charge of the department to which the Bill relates, is not a member of the House which has appointed the Select Committee to consider the Bill, he has the right of attending at, and taking part in the deliberations of the Committee, though he cannot vote as a member thereof.

At the time of the appointment of a Select Committee by either House, the number of persons whose presence will be necessary to constitute a quorum of the Committee is fixed by the House.

The Select Committee of each House must submit to it a report on the Bill that has been referred to it. If any of its members desires to record a minute of dissent on any point, he must sign the report stating that he does so subject to his minute of dissent which has to be submitted at the same time.

A Select Committee[1] may be appointed by either House to consider and report upon the draft amendments of its Standing Orders. The President of the House must be its Chairman, and the Deputy President in the case of a Committee of the Assembly, and one of the Chairmen, to be nominated by the President, in the case of a Committee of the Council, must be a member. The remaining members,

[1] Legislative Assembly Standing Order 56 and Council of State Standing Order 55.

who must be seven in number, are selected by the House by means of the single transferable vote in accordance with the regulations made in this behalf by the President.

Joint Committee of both Houses.

A Bill may be committed to a Joint Committee[1] of both Houses. Such a Committee is composed of an equal number of members of each House. The Chairman of the Committee is elected by the Committee. He has only a single vote, and, if the votes are equally divided on a matter, the question is decided in the negative. The time and place of the meeting of the Committee are fixed by the President of the Council of State.

A Joint Committee is formed as follows:—If a resolution is passed in the originating House to the effect that a Bill should be committed to a Joint Committee of both Houses, a message is sent to the other House informing it of the resolution and desiring its concurrence in the same. If the other House agrees, a motion is made in each House nominating the members thereof who are to serve on the Committee.

Committee on Public Accounts.

The Committee[2] on Public Accounts is a Committee of the Assembly only. As soon as possible after the commencement of the first session of each Assembly, such a Committee is, subject to what follows, constituted for the duration of the Assembly to deal with the audit and appropriation accounts of the Governor-General in Council and such other matters as the Finance Department of the Government of India may refer to it. It is composed of not more than twelve members including the Chairman, of whom not less than two-thirds are elected by the non-official members of the Assembly according to the principle of proportional representation by

[1] Indian Legislative Rule 42.
[2] Indian Legislative Rule 51 as subsequently amended.

means of the single transferable vote. The remaining members are nominated by the Governor-General. Casual vacancies in the Committee are filled by election or nomination in the aforesaid manner according as the member who has vacated his seat was an elected or nominated member, and any person so elected or nominated holds office for the unexpired period of membership of the person in whose place he is elected or nominated. Of the members elected at the time of the constitution of the Committee not less than one half, who are to be selected by lot, must retire on the expiry of one year from the date of their election and the remainder must retire on the expiry of the second year from that date. The vacancies thus created in each year must be filled as they arise, by elections held in the aforesaid manner. Retiring members are eligible for re-election.

The Finance Member is the Chairman of such a Committee, and has, in the case of an equality of votes on any matter, a second or casting vote. We shall discuss the functions of the Committee on Public Accounts elsewhere.

Committee on Petitions.

Each House has its Committee on Petitions. In the Assembly, the Committee is constituted at the commencement of each session, and consists of its Deputy President who is the Chairman of the Committee, and four members nominated by its President, of whom one must be a Chairman of the Assembly. In the absence of the Deputy President, the Chairman of the Assembly presides. In the Council of State, the Committee consists of a Chairman and four members nominated, at the beginning of each session, by its President. The President of either House can fill any vacancies occurring in the Committee of the House during a session.

We shall now describe how laws are made by the Indian Legislature. The stages through which a Bill, i.e. a

project of law, must pass from the beginning of its career to its conclusion are many and the procedure adopted at each stage is rather complex. The practices of the Assembly and the Council are similar both in regard to those stages and the rules of procedure relating to them.

Procedure for legislation.

Introduction of a Bill.

A Bill may originate in either House. Any member thereof, other than a Member of the Government, desiring to move for leave to introduce a Bill, must give, unless the Governor-General otherwise directs, one month's[1] notice of his intention to o so, and must, along with the notice, submit a copy of he Bill and a full statement of its objects and reasons.[2] If, under the Act, the Bill requires for its introduction the previous sanction of the Governor-General, a copy of such sanction must be annexed to the notice.[3] If a motion for leave to introduce a Bill is opposed, the President after allowing, if he thinks fit, the mover and the opposer of the motion to make each a brief explanatory statement in support of his contention, may, without further debate, put the question.[4] After a Bill has been introduced, it must, as soon as possible, be published in the Gazette of India, if it has not already been so published.[5]

The Governor-General, however, may direct the publication of any Bill, together with a statement of its objects and reasons, in the Gazette, even if no motion has been previously made for leave to introduce it.[6] In such a case it is not necessary to move for leave to introduce the Bill; nor, if the Bill is afterwards introduced, is it required to

[1] Or, if the Governor-General so directs, a further period not exceeding in all two months.

[2] Indian Legislative Rule 19.

[3] *Ibid.*

[4] Legislative Assembly Standing Order 37 and Council of State Standing Order 36.

[5] Indian Legislative Rule 20.

[6] *Ibid.*, 18.

publish it again.[1] And if he certifies that a Bill or any clause of a Bill or any amendment to a Bill affects the safety or tranquillity of British India or any part thereof, and directs that no proceedings or no further proceedings shall be taken thereon, all notices of motions in relation to the Bill, clause, or amendment, must lapse, and if any such motion has not already been included in the list of business, it cannot be so included after the direction.[2]

Motions after introduction.

When a Bill is introduced in either House or on some subsequent occasion, the member in charge may move (i) for the consideration of the Bill by the House either at once or on some future day to be then apppointed, or (ii) for its reference to a Select Committee, or (iii) for its circulation for the purpose of eliciting public opinion thereon.[3] It may be stated here, by the way, that a motion for committing a Bill to a Joint Committee of both Houses may be made at any stage at which a motion for its reference to a Select Committee is in order.[4] At this stage the principle of the Bill and its general provisions may be discussed, but no discussion of its details further than is necessary to explain its principle is allowed.[5] Nor can any amendment to the Bill be moved at this stage.[6] But if the member in charge moves for the consideration of his Bill, any member

[1] Indian Legislative Rule 18.

[2] Section 67 (2*a*) and I.L.R., 21.

[3] But no such motion can he made until after copies of the Bill have been made available for the use of members, and any member may object to any such motion being made unless copies of the Bill have been so made available for three days before the day on which the motion is made, and 'such objection shall prevail, unless the President, in the exercise of his power to suspend this standing order, allows the motion to be made.' Legislative Assembly Standing Order 38 and Council of State Standing Order 37.

[4] *Ibid.*

[5] Legislative Assembly Standing Order 39 and Council of State Standing Order 38.

[6] *Ibid.*

may move an amendment for its reference to a Select Committee or for its circulation for the purpose of eliciting public opinion on it by a date to be specified in the motion.[1] And if he moves for the reference of his Bill to a Select Committee, any member may move an amendment for its circulation for the purpose of eliciting public opinion on it.[2]

Where a motion for the circulation of a Bill is carried and the Bill is accordingly circulated and opinions are received thereon, the member in charge, if he wants to proceed with his Bill thereafter, must move for its reference to a Select Committee, unless the President of the House to which the member belongs, allows, by exercising[3] his special power, a motion that the Bill be taken into consideration.

No motion that a Bill be taken into consideration or be passed can be made by any member other than the member in charge[4] of the Bill and no motion that a Bill be referred to a Select Committee or be circulated or recirculated for the purpose of eliciting public opinion thereon can be made by any member other than the member in charge except by way of amendment to a motion made by the member in charge.

Reference to a Select Committee.

When a Bill is referred to a Select Committee, the Committee goes through the Bill clause by clause and may amend it if it so thinks fit. The Committee may, as has been seen before, hear expert evidence and representatives of special interests affected by the measure before it. It then

[1] Legislative Assembly Standing Order 39 and Council of State Standing Order 38.

[2] By a date to be specified in the motion. *Ibid.*

[3] *Ibid.* The President may thus suspend in this connection the relevant Standing Order.

[4] Here the expression 'member in charge' means, in the case of a Government Bill, any member acting on behalf of the Government, and, in any other case, the member who has introduced the Bill, or, where the Bill has been laid on the table in the other Chamber, the member who has given notice of his intention to move that the Bill be taken into consideration.—Indian Legislative Rule 20A.

submits a report on the Bill. The report, which may be either preliminary or final, must be made not sooner than three months from the date of the first publication of the Bill in the Gazette, unless the House orders it to be submitted earlier.[1] This time limit does not apply to a Bill imposing any tax. The Select Committee has to state in its report whether the Bill has been so altered as to require republication.[2] Any member of the Committee is at liberty to record a minute of dissent on any point.

Procedure after the presentation of Report.

The report is presented to the originating House by the member in charge of the Bill. No debate is allowed at this stage, but the member in charge may, in presenting the report, make any remarks, provided that he confines himself to a brief statement of fact.[3] The report with the amended Bill must be published in the Gazette, and a printed copy of the report must be made available for the use of every member of the House to which it has been presented. If any member is unacquainted with English, the Secretary of the House must, if requested, get the report translated for his use into such vernacular language as the President may direct.[4] After the Bill has been finally reported to the House by the Select Committee, the member in charge may move (i) for the consideration by the House of the Bill as reported by the Committee[5], or (ii) for its recirculation

[1] Legislative Assembly Standing Order 41 and Council of State Standing Order 40.

[2] *Ibid.* This would probably involve the renewal of the second stage (p. 258) of the Bill.

[3] Legislative Assembly Standing Order 42 and Council of State Standing Order 41.

[4] Legislative Assembly Standing Order 43 and Council of State Standing Order 42.

[5] 'Provided that any member may object to its being so taken into consideration if a copy of the report has not been made available for the use of members for seven days, and such objection shall prevail, unless the President, in the exercise of his power to suspend this Standing Order, allows the report to be taken into consideration.'—

for the purpose of obtaining further opinion thereon, or (iii) for its recommittal either without limitation, or with respect to particular clauses or amendments only, or with instructions to the Committee to make some particular or additional provision in the Bill.[1] If the member in charge moves for the consideration of the Bill, any other member may move an amendment for its recommittal or for its 'recirculation'[2]. If carried, such an amendment 'adds a step to the journey of the Bill.'

When a motion that a Bill be taken into consideration has been adopted, any member may propose an amendment of the Bill.[3] If notice of a proposed amendment has not been given two clear days before the day on which the Bill is to be considered, any member may object to the moving of the amendment.[4] Such objection will prevail unless the President, in the exercise of his special power,[5] permits the amendment to be moved. If a number of amendments have been proposed, they are considered in the order of the clauses to which they respectively relate; and in respect of any such clause a motion is deemed to have been made, 'that this clause stand part of the Bill.'[6] The President of each House, may, however, submit the Bill, or any part of the Bill, clause by clause. If this procedure is adopted, he calls each clause separately, and, when the amendments relating to it have been dealt with, puts the question 'that this clause (or, as the case may be, that this clause as amended) stand part of the Bill.'

Legislative Assembly Standing Order 44 and Council of State Standing Order 43.

[1] *Ibid.* [2] *Ibid.*

[3] Legislative Assembly Standing Order 45 and Council of State Standing Order 44.

[4] *Ibid.*, 46 and *ibid.*, 45. The Secretary must, if time permits, send a printed copy of each proposed amendment to every member.—*Ibid.*

[5] He is empowered to suspend the relevant Standing Order.—*Ibid.*

[6] Legislative Assembly Standing Order 47 and Council of State Standing Order 46.

If a motion that a Bill be taken into consideration has been carried and if the Bill is not amended, the member in charge may at once move that the Bill be passed.[1] If, however, the Bill is amended, any member may object to any motion, on the same day, that the Bill be passed. If the objection is allowed by the President, a motion that the Bill be passed may be made on any subsequent day.[2] To such a motion no amendment is in order which is not either formal or consequential on an amendment made after the Bill was taken into consideration.[3] When a Bill is passed by one House, a copy thereof is signed by the President of the House.[4]

Withdrawal of a Bill.

The member who has brought in a Bill may at any stage of the Bill move for leave to withdraw it; and, if such leave is given, no further motion can be made with reference to the Bill.[5]

Reconsideration of a Bill.

We have seen before that the Governor-General may, where a Bill has been passed by both Houses, return the Bill for reconsideration by either House. When a Bill is sent back for reconsideration, the point or points referred for reconsideration must be put before the House and must be discussed and voted upon in the same way as amendments to a Bill, or in such other way as the President may consider most convenient for their consideration.[6]

It has been stated before that, except as otherwise[7] provided by the Act, a Bill is not considered to have been

[1] L.A.S.O. 49 and C.S.S.O. 48.

[2] *Ibid.*

[3] *Ibid.*

[4] The Secretary of the Council of State must submit a copy of every Bill passed by both Houses to the Governor-General.

[5] Legislative Assembly Standing Order 50 and Council of State Standing Order 49.

[6] L.A.S.O. 53 and C.S.S.O. 52. Thereafter the Bill will presumably pass through the same stages as an amended Bill.

[7] For instance, a Bill may become an Act on 'certification' by the Governor-General though it has been assented to only by one Chamber, or even though it has not been assented to by either Chamber.

passed by the Indian Legislature unless it has been agreed to by both Houses either without amendment or with such amendments only as may be agreed to by both Houses. When a Bill has been passed by the originating House, it is sent up to the other House to pass through its several stages there. These stages practically correspond to those in the originating House. At any time after copies of the Bill have been laid on the table of the other House, any member acting on behalf of the Government in the case of a Government Bill or, in any other case, any member may give notice of his intention to move that the Bill be taken into consideration. But there is one thing to be noted here. If the Bill has already been referred to a Select Committee of the originating House or to a Joint Committee of both Houses, it cannot be again committed to a Select Committee in the other House.[1] Nor is there any provision for further circulation of the Bill at this stage. If the Bill is passed by the other House without amendment, a message is sent to the originating House to the effect that the other House has agreed to the Bill without any amendment.[2] If, however, the Bill is amended by the other House, it is sent back with a message requesting the concurrence of the originating House in the amendments.[3] The originating House may refuse to take them into consideration, or may move further amendments to their subject-matter, or may agree to them.[4] But no further amendment can be moved to the Bill at this stage, unless it is consequential on, or an alternative to, an amendment made by the other House.[5]

Procedure regarding legislation in both Chambers.

If, however, the originating House disagrees with the amendments made by the other House or with any of them, the Bill is sent to that House with a message intimating its disagreement.[6] Or if it agrees to the amendments or any

[1] Indian Legislative Rule 29. [2] *Ibid.*, 31.
[3] *Ibid.*, 32. [4] *Ibid.*, 35. [5] *Ibid.*, 35. [6] *Ibid.*, 36.

of them with further amendments, or if it proposes further amendments in the place of the amendments made by the other House, the Bill as further amended is sent to the other House with a message to that effect.[1] The other House may either agree to the Bill as originally passed by the originating House or as further amended by it, as the case may be, or may send it back with a message that it insists on its own amendments.[2] If the Bill is sent back with the message that the other House insists on its amendments which the originating House is unable to accept, the latter may either allow the Bill to lapse or may report the fact of disagreement to the Governor-General[3] who may,[4] if the two Houses fail to come to an agreement with regard to the Bill within six months of its passage by the originating House, refer the matter for decision to a joint sitting of both Houses convened by him. The President of the Council of State will preside at a joint sitting and the procedure of the Council will, so far as possible, be followed. The members present at a joint sitting will deliberate and vote upon the Bill as last proposed by the originating House and upon the amendments, if any, which have been made therein by one House and rejected by the other. If any such amendments are affirmed by a majority of the total members of the two Houses present at such sitting, they will be deemed to have been carried; and if the Bill with the amendments, if any, is affirmed by a similar majority, it will be taken to have been duly passed by both Houses.

Besides the provision for a joint sitting of both Houses, there is another provision for bringing about agreement between the two Houses in case of difference of opinion between them on any matter.

[1] Indian Legislative Rule 36.
[2] *Ibid.*, 36.
[3] *Ibid.*
[4] *Vide* Section 67 (3) of the Act.

Conference for discussing a difference of opinion between two Houses.

If both Houses agree to a meeting of members for the purpose of discussing a difference of opinion which has arisen between them, a conference[1] will be held. At such a conference each Chamber will be represented by an equal number of members. The conference[2] will determine its own procedure. The time and place of the conference will be appointed by the President of the Council.

Messages between one House and the other are conveyed by the Secretary of the one House to the Secretary of the other, or in such other manner as the Houses may decide.[3]

After a Bill has been duly passed by the Indian Legislature, it is submitted to the Governor-General to go through its final stage. It cannot have the force and effect of law until it has received, as required by the Act, the assent of the Governor-General or of His Majesty in Council, as the case may be. As we have discussed this matter in a previous chapter,[4] we need not repeat it here.

Power to re-introduce Bills.

If—

(i) a dilatory motion[5] is carried in either House in respect of a Government Bill, or

(ii) either House refuses to take into consideration or to refer to a Select Committee or to pass any Government Bill,

and if thereafter the Governor-General recommends that the Bill be passed in a particular form, a motion may be made in either House for leave to introduce the Bill in that form, and, if such recommendation is made in the case referred to

[1] Indian Legislative Rule 40.

[2] Obviously, it will make necessary recommendations to both the Houses.

[3] Indian Legislative Rule 41.

[4] See chapter 13.

[5] A "dilatory motion" means a motion that a Bill be referred to a Select Committee or that it be circulated for the purpose of eliciting (public) opinion thereon or any other motion the effect of the carrying of which will be to delay the passage of a Bill.'—Indian Legislative Rule 36A.

in clause (i), the Bill[1] in respect of which the dilatory motion has been made, will be considered as withdrawn.[2]

A recommendation or certification in respect of any Bill by the Governor-General under Section 67B[3] of the Act may be made by message and must be communicated to either House by the President.[4] No dilatory motion can be made in connexion with a Bill, in respect of which a recommendation has been made, without the consent of the member in charge of the Bill.[5] And if during the passage of a Bill in either House the Governor-General makes a recommendation in respect of it, and if any clause of the Bill has been agreed to, or any amendment has been made, in a form inconsistent with the form recommended, the member in charge of the Bill may move any amendment which, if accepted, would bring the Bill into the form recommended.[6]

Petitions relating to pending Bills.

Petitions relating to a Bill pending in either House may be presented to the House by a member, or be forwarded to the Secretary. In the latter case the fact must be reported by the Secretary to the House. In presenting a petition[7] a member must confine himself to a statement in the following form :—

'I present a petition signed by. . . . . petitioners regarding. . . . . Bill now pending in this Chamber.'

No debate will be in order on this statement.

Every petition must, after presentation by a member or report by the Secretary, as the case may be, be referred to the Committee on Petitions in the House. The Committee must examine every petition that is referred to

[1] Here the original Bill is meant and not the Bill in the recommended form.
[2] Indian Legislative Rule 36A. [3] See pages 202-203.
[4] Indian Legislative Rule 36B. [5] *Ibid.*
[6] *Ibid.* [7] For 'Form of Petition' see App. W.

it, and must report to the House stating the subject-matter of the petition, the number of persons by whom it is signed and whether it is in conformity with the Standing Orders of the House. If the petition is in conformity with the Standing Orders, the Committee may direct that it be circulated as a paper to the Bill to which it relates.

Every petition must (i) either be in English and in print, or, if not in English, be accompanied by an accurate English translation in print; (ii) if presented by a member, be countersigned by him; and (iii) be couched in respectful and temperate language.

The full name and address of every signatory to a petition must be set out in it and must be authenticated by the signatory, if literate, by his signature, and, if illiterate, by his thumb impression. Every petition must be addressed to the Council of State, or the Legislative Assembly, as the case may be, and must conclude with a definite prayer in regard to the Bill to which it relates.[1]

In a preceding chapter we[2] have stated the law relating to the granting of supplies for the use of the Government of India and, in that connexion, discussed the nature of the control which the Indian Legislature exercises over the expenditure of public money by the Government. We shall now proceed to describe how the supplies are actually voted.

How supplies are granted.

The estimates of the probable receipts and expenditure of the Governor-General in Council during the ensuing financial year (April to March) are prepared in the cold weather of each year. It may be remembered that these estimates[3] are

[1] See App. W. [2] See ch. xiii *ante*.

[3] Under the Indian Legislative Rule 48A, the Budget may be presented to each House in two or more parts; and when such presentation takes place, each part must be dealt with as if it were the Budget; i.e., the Rules and Standing Orders of the House relating to the Budget must apply to each part of the Budget. As has been

every year presented to each House of the Indian Legislature in the form of a statement (known as the 'Budget') on such day or days[1] as the Governor-General may appoint. There cannot be any discussion of the Budget on the day on which it is presented to either House. As has been pointed out before, though, by a modification of the original relevant Standing Order, authority has been given to the Council of State to discuss the Budget, the Council has no power under the Act to vote money. The Assembly deals with the Budget in two stages, namely, (*a*) a general discussion, and (*b*) the voting of demands for grants.[2] On a day to be fixed by the Governor-General subsequent to the day of the presentation of the Budget and for such time as he allots for this purpose, the Assembly discusses the Budget as a whole or any question of principle involved therein.[3] But no motion is in order at this stage, nor can the Budget be submitted to the vote of the Assembly.[4] The Finance Member has a general right of reply at the end of the discussion. The President may prescribe a time-limit for speeches.[5]

The next stage is the voting of grants. A separate demand is ordinarily made in respect of the grant proposed for each department of the Government. But the Finance Member may include in one demand grants for two or more departments, or make a demand in respect of expenditure which cannot be brought under particular departments.[6]

pointed out before (page 205 foot-note 2), owing to the separation of Railway Finance from General Finance, the Budget of the Government of India is presented in two parts. They are known as the Railway Budget and the General Budget. The General Budget relates to subjects other than Railways. The same procedure applies to both the Budgets.

[1] As a matter of fact, the General Budget is presented to the two Houses of the Indian Legislature simultaneously. This is also the case with the Railway Budget.—See page 205, foot-note 2.

[2] Indian Legislative Rule 45.

[3] *Ibid.*, 46.

[4] *Ibid.*

[5] *Ibid.*

[6] I.L.R., 44.

Each demand contains, first, an estimate of the total grant proposed, and then a statement of the detailed expenditure under each grant, divided into items.[1]

Not more than fifteen days can be allotted by the Governor-General for the discussion of the demands for grants.[2] Of the days so allotted, not more than two days can be devoted to the discussion of any one demand. As soon as the maximum limit of time is reached, the President forthwith puts every question necessary to dispose of the demand under discussion.[3] At 5 p.m. on the last day of the days allotted, the President must put every question necessary to dispose of all the outstanding matters in connection with the demands for grants.

It may be remembered that a motion for appropriation can be made only on the recommendation of the Governor-General communicated to the Assembly.[4] When such a motion is made, amendments may be moved to omit or reduce any grant, but not to increase or alter the destination of a grant.[5] When there are several motions relating to the same demand, they are discussed in the order in which the heads to which they relate appear in the Budget.[6] Notice of a motion to omit or reduce any grant should be given two clear days before the day appointed for the consideration of the grant; otherwise any member may object to the moving of the motion, and such objection will prevail, unless the President allows the motion to be made.[7]

[1] Indian Legislative Rule 46.

[2] *Ibid.*, 47. Before the separation of Railways Finance the number of days actually allotted was six in 1921, five in 1922, six in 1923 and six in 1924. More days are allotted nowadays.—Wattal, *Financial Administration in British India*, p. 53 n ; also *Legislative Assembly Debates*, February 20, 1925.

[3] I.L.R., 47.

[4] Indian Legislative Rule 48.

[5] *Ibid.*

[6] *Ibid.*

[7] Legislative Assembly Standing Order 72.

Motions for the reduction or omission of grants are made not merely for the purpose of securing economy in administration; they are very often moved with the object of criticizing executive acts of the Government or its policy in respect of certain matters. Sometimes a motion for reduction is brought forward by way of censure upon the Government.

Excess grants. If, during any financial year, money has been spent on any service, for which the vote of the Assembly is necessary, in excess of the amount voted for that service and for that year, a demand for the excess must be submitted to the Assembly by the Finance Member, and must be dealt with by the Assembly in the same way as if it were a demand for a grant.[1] It is obvious that a demand for an excess grant can only be submitted after the expiry of the financial year in which the excess expenditure occurred.

Supplementary grants. A supplementary estimate[2] must be presented either when the amount voted in respect of a grant is found to be insufficient for the current financial year, or when a need arises during the year for expenditure, for which the vote of the Assembly is necessary, upon some new service not contemplated in the Budget for the year. And under another provision[3] an estimate may also be presented for an additional or supplementary grant in respect of any demand to which the Assembly has

[1] Indian Legislative Rule 49.

[2] *Ibid.*, 50.

[3] See *ibid.*; also Notification No. F—76-1/24A, Legislative Department in *The Gazette of India* (Extra.), July 21, 1924.

In view of the power of restoration of grants which the Governor-General in Council possesses under Section 67A (7) of the Act, this additional provision relating to supplementary grants has no meaning so far as those demands are concerned which are essential to the discharge of his responsibilities. It is probably meant for those demands which are not so essential and which have been refused or reduced by the Assembly. See pp. 278-83 in this connection.

previously refused its assent, or the amount of which it has reduced. Supplementary or additional estimates are dealt with by the Assembly in the same way as if they were demands for grants.

If the Governor-General in Council restores, under Section 67A (7)[1] of the Act, any grant which has been refused or reduced by the Assembly, or if the Governor-General authorizes, in case of emergency, any expenditure under Section 67A (8)[2] of the Act, the Finance Member is required to place, as soon as possible, on the table of the Assembly a statement showing the action taken by the Governor-General in Council or the Governor-General, as the case may be; but no motion is in order in regard to that action, nor can the statement be discussed.[3]

Duty of the Committee on Public Accounts.

We have previously stated the composition of the Committee on Public Accounts, which is constituted to deal with the audit and appropriation accounts of the Governor-General in Council and such other matters as the Finance Department may refer to it. In examining those accounts the Committee must satisfy itself that the money *voted* by the Assembly has been spent within the scope of the demand *granted* by the Assembly. Besides, the Committee must bring to the notice of the Assembly—

(1) every reappropriation from one grant to another grant;

(2) every reappropriation within a grant which is not authorized by rules prescribed by the Finance Department; and

(3) any expenditure which the Finance Department has requested should be brought to the notice of the Assembly.[4]

[1] See chapter xiii *ante*. [2] See *ibid.*

[3] Legislative Assembly Standing Order 73.

[4] Indian Legislative Rule 52. Only the accounts of the voted

The scrutiny made by this Committee is a very valuable safeguard against any irregularity or laxity in the administration of the finances of the Government.

Communications between the Governor-General and either Chamber of the Indian Legislature.

The last thing that we should like to touch on in connection with the question of the conduct of business in the Indian Legislature is the subject of communications between the Governor-General and either House of the Legislature. The Governor-General communicates with either House by a speech from the throne where he has required its members to attend,[1] or by a written message delivered to the President of the House by a Member of the Government and read to the House by the President, or informally through a Member of the Government.

On the other hand, communications from each House to the Governor-General are made by (1) a formal address after a motion made and carried in the House, and (2) through the President.[2]

expenditure of the Government of India are brought to the scrutiny of the Committee.

[1] Sections 63A (3) and 63B (3) of the Act.

[2] Legislative Assembly Standing Order 74 and Council of State Standing Order 71.

CHAPTER XVII

PROCEDURE IN A GOVERNOR'S LEGISLATIVE COUNCIL

Provincial Legislative Rules and Standing Orders identical in respect of many matters with the Indian Legislative Rules and Standing Orders—Sitting of a provincial Legislative Council—Prorogation—Language of the Council—Quorum—How supplies are granted—Voting of grants—Excess grants—Supplementary grants—Additional Sub-rule relating to Supplementary Budget—Comparison with the English practice—Possible harmful consequences of the additional Sub-rule—Committee on Public Accounts and its duties—Provincial Legislative procedure—A brief statement of the procedure for legislation in a Governor's Legislative Council—Procedure for legislation in the Bengal Legislative Council.

Provincial Legislative Rules identical in respect of many subjects with the Indian Legislative Rules.

As the Rules and Standing Orders providing for the conduct of business and the procedure to be followed in a Governor's Legislative Council are, except in respect of a few subjects like legislation or the granting of supplies, essentially identical *mutatis mutandis* with the Rules and Standing Orders of the Indian Legislature, they need not be repeated here. If any reader is interested to know how, and under what conditions, questions[1] may be asked, or a resolution, or a motion for adjournment[2] for the purpose of discussing a definite matter

[1] *Ordinarily* in Bengal, fifteen days' notice is required for questions and no member can send in notice of more than 12 questions during the session of the Council, exclusive of any question that may have been carried over for reply from a previous session.

[2] Not less than thirty members in the case of the Bengal Legislative Council and not less than twenty in the case of the Madras or the United Provinces Legislative Council must rise in their places before a member desiring to move a motion for adjournment can have the leave of the Council.

of urgent public importance, or the closure[1] may be moved, or how business is arranged, time is allotted for non-official business, and points of order are decided in a local legislature, he has only to refer to the procedure in either Chamber of the Indian Legislature relating to the identical matters as described in Chapter XV. We propose to discuss in this chapter, mainly, how laws are passed by a Governor's Legislative Council and how money is voted by it for the use of the local Government. Even in respect of these matters, the difference in procedure between the Indian Legislature and a local Legislature is, as we shall see, very slight, and whatever difference there exists, it is due to either the unicameral form of the latter or to the division of the provincial subjects into Transferred and Reserved.

Sitting of a Provincial Legislative Council.

The Governor of a province appoints the time and place for holding a session of his Legislative Council.[2] He can also prorogue the Council by notification or otherwise. A prorogation terminates a session of the Council and its effects on the unfinished business of the Council are substantially the same[3] as those in the case of a prorogation of either House of the Indian Legislature.

Prorogation.

The business of a provincial Legislative Council is

[1] In the Bengal Legislative Council a motion for closure must be carried by the votes of at least two-thirds of the members present and voting. This is not the case in the Bombay, Madras, or the United Provinces Legislative Council.—*Vide* the relevant Standing Orders in the cases of Bombay, Madras, Bengal and the United Provinces Legislative Councils.

[2] Section 72B (2).

[3] On the termination of a session in Bengal all pending notices lapse and fresh notice must be given for the next session except in the case of a question which has not been answered or a resolution on which a member has indicated his first priority and which remains undisposed of at the end of a session.—*Vide The Bengal Legislative Council Manual*, 1927, p. 281.

On the termination of a session in the United Provinces, all pending notices lapse, except notices of questions to which final replies

transacted in English, but any member who is not 'fluent in English' may address the Council in any recognized vernacular of the province, provided that the President may ask a member to speak in any language in which he is known to be proficient.

Language of the Council.

The minimum number of members required to constitute a quorum in the case of each of the Legislative Councils mentioned below is as follows[1] :—

Quorum.

Madras, 30 ; Bengal, Bombay, the United Provinces and Bihar and Orissa, 25 ; the Central Provinces, 20 ; the Punjab, 15 ; and Assam, 12.

The estimates of the annual expenditure and revenue of a Governor's province are submitted in the form of a statement to the local Legislative Council on such day as may be appointed by the Governor for the purpose.[2] This statement is referred to as the provincial Budget. The estimates are prepared beforehand by the Finance Department of the province and are based on the materials supplied to it by the spending departments of the local Government No discussion of the Budget is allowed on the day of its presentation.

Provincial Budget: How Supplies are granted.

A separate demand must ordinarily be made in respect of the grant proposed for each department of the Government.[3] But it is open to the Finance Member to include

had not been given.—*Vide Manual of Business and Procedure in the United Provinces Legislative Council*, p. 3.

On the prorogation of a session in Bombay, all pending notices lapse and fresh notice must be given for the next session : provided that no further notice will be required of a question to which an *ad interim* reply has been given or of a statutory motion.—*Vide Rules and Standing Orders of the Bombay Legislative Council*, p. 11.

But the effect of a prorogation on unfinished Bills is the same in a Governor's Legislative Council as in the case of either Chamber of the Indian Legislature.

[1] See the Provincial Legislative Rule 13, relating to the relevant provinces.

[2] Provincial Legislative Rule 25.

[3] *Ibid.*, 26.

in one demand proposals for appropriation for two or more departments, or to make a demand in respect of expenditure, such as Famine Relief and Insurance and Interest, which cannot easily be brought under particular departments.[1] As far as possible, demands relating to the Reserved and Transferred subjects are to be kept distinct. Each demand must contain, first, a statement of the total grant proposed, and then a statement of the detailed estimate under each grant, divided into items.[2] Subject to these rules, the Finance Member presents the Budget in such a form as he considers most fitted for its consideration by the Council.[3]

The Council then deals with the Budget in two stages, namely, (i) a general discussion, and (ii) the voting of demands for grants.[4] On a day appointed by the Governor subsequent to the day of the presentation of the Budget and for such time as is allotted by him, the Council discusses the Budget as a whole or any question of principle involved therein; but no motion can be moved at this stage, nor can the Budget be submitted to the vote of the Council.[5] The Finance Member has a general right of reply[6] at the end of the discussion. The President may, if he thinks fit, prescribe a time-limit for speeches.

Not more than twelve days can be allotted by the Governor for the discussion of the demands for grants. Of the days so allotted, not more than two days can be allotted by him for the discussion of any one demand. As soon as the maximum limit of time for discussion is reached, the

[1] Provincial Legislative Rule 26.
[2] *Ibid.* [3] *Ibid.*
[4] *P.L.R.*, 27. [5] *Ibid.*, 28.
[6] 'The procedure (in Bengal) is for non-official members to speak first and then for the various official members to reply to the debate so far as their departments are affected. When once the official members have commenced their replies, no further speeches by non-official members are permitted'.—*The Bengal Legislative Council Manual*, 1927, p. 306.

President must forthwith put every question to dispose of the demand under discussion. At five o'clock on the last day of the allotted days the President must put every question necessary to dispose of all the outstanding matters in connexion with the demands for grants.[1]

As has been seen before, no motion for appropriation can be made except on the recommendation of the Governor communicated to the Council.[2] When a demand for a grant is made, motions may be moved to reduce the grant or to omit or reduce[3] any item in the grant, but not to increase or alter the destination of the grant.[4] When there are several motions relating to the same demand, they are discussed in the order in which the heads to which they relate appear in the Budget.[5] No motion can be made for the reduction of a grant as a whole until all motions for the omission or reduction of definite items within the grant have been discussed.[6]

Excess Grants.

If, during any financial year, money has been spent on a service, for which the vote of the Council is necessary, in excess of the amount granted to that service and for that year, a demand for the excess must be presented to the Council by the Finance Member,[7] and must be dealt with by the Council in the same way as a demand for a grant.[8] The Council ought not to be very generous in its attitude towards demands for excess grants

[1] Provincial Legislative Rule 29. [2] *Ibid.*, 30.

[3] The procedure in Bengal is as follows :—

'A motion to reduce a demand, to be in order, must specify a definite sum for reduction.

The proper form is as follows :—

"That the demand of Rs. 10,000 in respect of . . . be reduced by the sum of Rs. 4,000."

It is out of order to move "That the demand of Rs. 10,000 be reduced to Rs. 6,000".'—*The Bengal Legislative Council Manual*, 1927, p. 307.

[4] Provincial Legislative Rule 30. [5] *Ibid.* [6] *Ibid.*

[7] *P.L.R.*, 31. A demand for an excess grant can be presented after the expiry of the financial year in which the excess expenditure occurred. [8] *Ibid.*

otherwise, an encouragement will be given to departmental extravagance. Its attitude towards departmental extravagance should be the same as that of the English House of Commons. In order to place on record a permanent disapproval of departmental 'excesses', says Sir Erskine May,[1] 'the Commons resolved, 30th March, 1849, that "when a certain amount of expenditure for a particular service has been determined upon by Parliament, it is the bounden duty of the department which has that service under its charge and control, to take care that the expenditure does not exceed the amount placed at its disposal for that purpose."'

Rule 32 of the provincial Legislative Councils Rules originally laid down :—

Supplementary or additional grants.

(1) 'An estimate shall be presented to (a Governor's Legislative) Council for a supplementary or additional grant when—

(*a*) the amount voted in the Budget of a grant is found to be insufficient for the purposes of the current year, or

(*b*) a need arises during the current year for expenditure, for which the vote of the Council is necessary, upon some new service not contemplated in the Budget for that year.

(2) Supplementary or additional estimates shall be dealt with in the same way by the Council as if they were demands for grants.'

This original Rule relating to supplementary estimates has been amended:[2] after Sub-rule (1) above, the following Sub-rule has been inserted, namely :—

Additional Sub-rule relating to Supplementary Budget.

(2) 'An estimate may be presented to the Council for an additional or supplementary

[1] *Parliamentary Practice*, p. 453 (twelfth edition).
[2] See *The Gazette of India* (Extra.), July 21, 1924.

grant in respect of any demand to which the Council has previously refused its assent, or the amount of which the Council has reduced either by a reduction of the whole grant or by the omission or reduction of any of the items of expenditure of which the grant is composed.'

The original Sub-rule (2) has accordingly been renumbered (3).

Comparison with the English practice.

The original Rule was based on the practice of the British Parliament relating to supplementary grants. In England 'a supplementary estimate may be presented', according to Sir Erskine May,[1] 'either for a further grant to a service already sanctioned by Parliament, in addition to the sum already demanded for the current financial year, or for a grant caused by a fresh occasion for expenditure that has arisen since the presentation of the sessional estimates, such as expenditure newly imposed upon the executive Government by statute, or to meet the cost created by an unexpected emergency, such as an immediate addition to an existing service, or the purchase of land, or of a work of art.' Another distinguished writer[2] on the procedure of the British House of Commons says that a supplementary grant is required when an estimate already granted for some service or for some special purposes is found to be

[1] *Parliamentary Practice*, p. 452.

[2] Joseph Redlich, *The Procedure of the House of Commons*, vol. iii, p. 131.

We may also note the following views :—

'With the utmost effort at accuracy in the estimates they will always prove to be insufficient in some branch of the service, or an unexpected need for expenditure will arise ; and to provide funds in such cases supplementary estimates must be presented and voted before the close of the financial year'.—Lowell, *The Government of England*, vol. i, p. 285.

A supplementary estimate 'is needed either when the amount granted in accordance with the original estimate for a service is found to be insufficient for it, or when a need arises for expenditure on some new service not contemplated in the original estimates'.—*The System of National Finance* by Mr. Hilton Young, p. 87.

inadequate, or where a sum has been granted and is found to be too small for the object in view; or again, where some unforeseen call for expenditure arises during the course of the session. The last contingency is most commonly caused by military expeditions, naval mobilization and like events; in short, by the demands of foreign policy.

Possible harmful consequences of the additional Sub-rule.

It is evident from these quotations that, according to the English practice, if the demand for a grant is refused at the time of the consideration of the annual estimates, no supplementary estimate is presented in respect of the same demand during the current financial year. But the amendment,[1] which has been made by way of addition to the original

[1] The amendment was obviously made in order to meet the situation created by the injunction granted by Mr. Justice C. C. Ghosh of the Calcutta High Court, restraining the President of the Bengal Legislative Council from allowing a certain motion, being item No. 6 in the printed list of business, in the Council at its session which was to have commenced at 3 p. m. on July 7, 1924. The said item No. 6 ran as follows:—'Supplementary demand for grant 22—General Administration (Transferred). The Hon'ble Mr. J. Donald to move that a sum of Rs. 1,71,000 be granted for expenditure under the head 22—General Administration (Transferred) on account of the salaries of the Ministers.' The injunction was prayed for in connection with the suit brought by Messrs. Kumar Sankar Roy Chaudhury and Kiron Sankar Roy Chaudhury against the Hon'ble Mr. H. E. A. Cotton, the then President of the Bengal Legislative Council, and the two Bengal Ministers at the time. It may be stated here that the demand for a grant for the Ministers' salaries had been rejected on March 24, 1924, by a majority of one at the time of the consideration of the annual estimates.

In reply to a question of Dr. Sir Deva Prasad Sarvadhikary, the Home Secretary to the Government of India stated, in the Council of State, the following among other things on September 3, 1924:—'The Government of India and the Secretary of State agreed in thinking that the rules (regarding supplementary grants) referred to did not in fact preclude such a motion as was proposed to be moved by the Government of Bengal. In view, however, of the opinion expressed by the learned Judge of the Calcutta High Court and of the fact that the Government of India understood that a similar motion was proposed to be moved in the Bombay Legislative Council which was due to meet on the 21st July, 1924, the Government of India considered that it was desirable *ex majore cautela* to amend the rules. They accordingly made the necessary recommendations in regard to Indian

Rule, is a departure in principle from the English practice as stated above. It empowers a local Government to present a supplementary estimate in respect of a demand, assent to which has previously been refused by the local Legislative Council. Besides, it enables a local Government to bring forward, by exercising the power of prorogation, as many times as it likes during the same financial year, the same motions for appropriation which have been previously rejected by the local Council. The underlying principle of the amendment, therefore, is a negation of the principle of supplementary estimates as illustrated by the English system. 'Public control of public expenditure', says Mr. Hilton Young,[1] 'depends for its efficiency in a large measure on the financial scheme for the year being presented to the House (of Commons) and considered and approved once and for all and as a whole To allow the scheme, once approved, to be treated as something still fluid and liable to extensive modifications must infinitely weaken effective control, and Supplementary Estimates are the most harmful way of doing so. To make anything but the most restricted use of them must deprive the whole system of Supply of its meaning and utility.' The amendment, it may be argued, is not of much constitutional

Legislative Rules and the Legislative Council Rules of each province. Their recommendations were sanctioned by the Secretary of State in Council, and amendments to remove all doubts as to the meaning of the rules were made on the 19th July and published on the 21st July'.

'I would merely add that Mr. Justice Ghosh, in directing the issue of the injunction, concluded his order by expressing the opinion that the rules required revision in the light of the events in the case before him. The Reforms Enquiry Committee was not sitting at the time, and the proposals for the amendment and the reasons therefor were accordingly not laid before that Committee. The Government of India do not know whether the Law Officers of the Crown were consulted in England at the time. They did not themselves consult the Advocate-General of Bengal.'—*The Council of State Debates*, 3rd September, 1924.

[1] *The System of National Finance*, p. 89.

importance so far as the demands for grants relating to the Reserved subjects are concerned, as those demands, if refused, may be restored,[1] if the Governor of the province concerned certifies that the expenditure provided for by them is essential to the discharge of his responsibility for those subjects. But it is undoubtedly of great political significance so far as the demands for grants for the Transferred subjects are concerned. The enforcement of the amendment in connection with refused demands for grants relating to those subjects is bound to produce consequences subversive of the principle of ministerial responsibility which has been introduced into our constitution so far as the administration of the Transferred departments is concerned. That is to say, the responsiveness of Ministers to the declared wishes of the Legislative Council will diminish, if not altogether disappear, and the control of the Legislative Council over them will be correspondingly weakened. Another harmful consequence that is very likely to follow the enforcement of the additional Sub-rule[2] under consideration, is that occasions of friction between the legislature and the executive Government will multiply, engendering bitterness between them. Nor can we ignore here the effect of this Sub-rule upon the members of a provincial Legislative Council. It is very likely to make many of them less conscientious in their attitude towards demands for the Transferred subjects. Their votes in respect of those demands would not always be given under that heavy sense of responsibility which would otherwise attach to their votes if they had in their minds, when voting, that their decision,

[1] It is true, however, that the amendment will enable a local Government to re-submit a refused demand relating to a Reserved subject, which cannot be reasonably certified by the Governor as 'essential' to the discharge of his responsibility for the subject.

[2] I.e., the additional Sub-rule mentioned on pages 278–79.

so far as those demands were concerned, was final and might bring about the resignation of the Ministers concerned. Thus the additional Sub-rule is open to objection on various grounds[1].

Committee on Public Accounts and its duties.

As soon after the commencement of the first session of each Legislative Council as possible, a Committee on Public Accounts is constituted for the duration of the Council to deal with the audit and appropriation accounts of the province concerned and such other matters as the Finance Department of the local Government may refer to it. The Committee consists of such number of members as the Governor may direct. Of the members constituting the Committee not less than two-thirds are elected by the non-official members of the Legislative Council according to the principle of proportionate representation by means of the single transferable vote and the rest are nominated by the Governor. Casual vacancies in the Committee are filled in the same way as in the cases of such vacancies occurring in the Committee on Public Accounts of the Legislative Assembly.[2] Of the members elected at the time of the constitution of the Committee not less than one-third in the case of Bengal, and not less than one-half in the case of the United Provinces and Assam, who are to be selected by lot, must retire on the expiry of one year. The remainder in the case of the United Provinces and Assam, and not less than one-half of the remaining members, to be selected by lot, in the case of Bengal, must retire on

[1] Although the Joint Select Committee was of opinion that in cases where the Legislative Council would alter the provision for a Transferred subject, the Governor would be justified, if so advised by his Ministers, in re-submitting the provision to the Council for a review of its former decision, yet we believe that the possible disadvantages of the additional Sub-rule do more than outweigh its advantages.-See the remarks of the Joint Select Committee on clause 11 of the Government of India Bill, 1919.

[2] See pp. 255–56 *ante*.

the expiry of the second year[1]. The vacancies thus created are to be filled in the manner previously stated. Retiring members are eligible for re-election. The Finance Member of the local Government must be Chairman of the Committee, and, in the case of an equality of votes on any matter, has a second or casting vote[2].

In examining the audit and appropriation accounts of the province, the Committee must satisfy itself that the money *voted* by the Council has been spent within the scope of the demand granted by the Council[3]. Besides, it must bring to the notice of the Council[4]—

(1) every case of reappropriation from one grant to another ;

(2) every reappropriation within a grant which is not made in accordance with the Rules regulating the functions of the Finance Department or which has the effect of increasing the expenditure on an item the provision for which has been specifically reduced by a vote of the Council; and

(3) any expenditure which the Finance Department has desired should be brought to the notice of the Council.

Provincial legislative procedure.

The procedure for legislation is not uniform in the provincial Legislative Councils, as the Standing Orders relating thereto vary from province to province. It is not therefore possible for us to describe in this volume how laws are made by each provincial legislature. What we propose to do, however, is (i) to state the procedure of provincial legislation

[1] See *The Gazette of India*, February 19, 1927. The principle of retirement as stated on pages 283–84, is peculiar to Bengal, Assam and the United Provinces.

[2] Provincial Legislative Rule 33.

[3] Thus only the accounts of the voted expenditure of the Government are brought to the scrutiny of the Committee.—Provincial Legislative Rule 34.

[4] *Ibid.*

in a general way without going into details, and (ii) to describe briefly, more or less by way of illustration, as no province presents an exactly typical case, how Bills are passed by the Bengal Legislative Council.

A brief statement of the procedure for legislation in a Governor's Legislative Council

Any member, other than a Member of the Government, desiring to move for leave to introduce a Bill into a Legislative Council must give notice of his intention, and must submit, together with the notice, a copy of the Bill and a full statement of its objects and reasons[1]. If the Bill is one which requires, under the Government of India Act, previous sanction for its introduction, a copy of such sanction must be annexed to the notice. If any question arises whether a Bill is or is not one which requires sanction under the Act, the question must be referred to the authority which would have power to grant the sanction if it were necessary, and the decision of the authority on the question will be final[2]. The period of notice of a motion for leave to introduce a Bill is as follows[3] :—

(1) fifteen days, if the Bill relates to a Transferred subject ;

(2) one month or, if the Governor so directs, a further period not exceeding two months in all, if the Bill relates to a Reserved subject.

If, however, the Governor of a province orders the publication of a Bill (together with a statement of its objects and reasons) in the local Gazette, it is not necessary to move for leave to introduce the Bill[4] ; nor is it necessary in that case to publish the Bill again, if it is afterwards introduced.

As soon as possible after a Bill has been introduced into a provincial Legislative Council, it must, unless it has

[1] *P. L. R.*, 19. Every notice must be addressed to the Secretary of the Council.

[2] *Ibid.* [3] *Ibid.* [4] *P. L. R.*, 18.

already been published, be published[1] in the local Gazette.

If a motion for leave to introduce a Bill is opposed, the President may permit a brief explanatory statement from the mover and the opposer, and may then put the question without further debate. If such a motion is carried, the Bill will be deemed to be introduced.

After a Bill has passed through its introductory stage, it is generally referred to a Select Committee. When this Committee submits its final report, the Bill, as reported by the Committee, is taken into consideration, unless it is re-committed. Amendments may be moved to the Bill at this stage. After the amendments have been disposed of, the Bill, as amended, or as it has emerged from the Select Committee, or in its original form, as the case may be, is passed by the Council.

As has been seen before, the Bill cannot have the force and effect of law until it has received, ordinarily, the assent of the Governor of the province concerned as well as of the Governor-General.

If the Governor of a province certifies that a Bill or any clause of a Bill or any amendment to a Bill affects the safety or tranquillity of the province or any part thereof, and directs that no proceedings, or no further proceedings, are to be taken thereon, all notices of motions relating to the subject-matter of the certificate must lapse, and if any such motion has not already been set down on the list of business, it cannot be so set down after the direction.[1]

As the provincial Legislative Rules in regard to any dilatory motion in respect of any official Bill and the power to re-introduce an official Bill, as also in regard to the procedure to be adopted on the recommendation and certification of any Bill by the Governor under section 72E of the Act,

[1] Provincial Legislative Rule 21.

are identical *mutatis mutandis* with the relevant Indian Legislative Rules,[1] they need not be stated here.

Procedure for legislation in the Bengal Legislative Council.

When a Bill is introduced in to the Bengal Legislative Council, or on some subsequent occasion, a motion is made by the member in charge[2] either (i) for the consideration of the Bill by the Council at once or at some future time to be then mentioned, or (ii) for its reference to a Select Committee, or (iii) for its circulation for the purpose of eliciting public opinion thereon[3]. The principle of the Bill and its general provisions may be discussed at this stage, but no discussion of its details further than is necessary to explain its principle is in order[4]. Nor can any amendments be moved to the Bill at this stage. But if the member in charge moves for the consideration of his Bill, any member may move an amendment for its reference to a Select Committee or for its circulation[5]. If, on the other hand, he moves for the reference of the Bill to a Select Committee, an amendment may be moved for its circulation for the purpose of eliciting public opinion thereon. Where a Bill has been so circulated and opinions have been received thereon within the appointed time, the member in charge, if he wants to proceed with his Bill, must move for its reference to a Select Committee unless the President allows, in the exercise of his special power, a motion to be made that the Bill be taken into consideration[6].

[1] Provincial Legislative Rules 20B and 20C; also see pp. 265-66 *ante*.

[2] The expression 'member in charge' means, in the case of a Government Bill, any member acting on behalf of the Government and, in any other case, the member who has introduced the Bill.—Provincial Legislative Rule 20A.

[3] But no such motion can be made until after copies of the Bill have been made available for the use of members, and any member may object to any such motion being made, unless copies of the Bill have been so available for seven days before the motion is made. Such objection will prevail unless the President allows the motion to be made.—Bengal Legislative Council Standing Order 43.

[4] *Ibid.*, 44. [5] *Ibid.* [6] *Ibid.*

The Member of the Government to whose department the Bill relates and the member who introduced the Bill must be members of every Select Committee. The other members of the Committee are named in the motion proposing the appointment of the Committee[1]. The Member of the Government to whose department the Bill relates must ordinarily be Chairman of the Committee. The Chairman has a second or casting vote in the case of an equality of votes. The Committee may hear expert evidence and the representatives of special interests affected by the measure before it. Any person residing within the jurisdiction of the Government of Bengal, whose evidence is, in the judgment of the Committee, material with reference to any Bill then under its consideration, may be compelled, under the Bengal Legislative Council (Witnesses) Act, 1866, to appear as a witness before the Committee and, further, to produce before it all such books, deeds and writings as are likely to be necessary for obtaining information regarding the matter under consideration[2].

Composition of a Select Committee.

When a Bill has been referred to a Select Committee, the Committee must submit a report thereon. The report may be either preliminary or final. Every report by a Select Committee on a Bill must be presented to the Council by the Chairman of the Committee. Any member of the Committee may record a minute of dissent if he so desires. After the presentation of the final report, the member in charge may move for the consideration of the Bill as reported by the Select Committee or for its re-committal[3] to the Committee. If he moves for its consideration, any member may move an amendment for its recommittal.

[1] Bengal Legislative Council Standing Order 40

[2] *Vide The Bengal Legislative Council Manual*, 1927, p. 294, Note (2), and also pp. 113–115.

[3] Bengal Legislative Council Standing Order 47.

When the motion that the Bill be taken into consideration has been accepted by the Council, amendments may be moved to the Bill[1]. The amendments are ordinarily considered in the order of the clauses to which they respectively relate[2]. If, however, no amendment is made when the motion for taking the Bill into consideration has been adopted, the Bill may be passed at once. If, on the other hand, an amendment is made, any member may object to the passing of the Bill at the same meeting. If such objection is allowed by the President to prevail, the Bill is passed at a future meeting either with or without further amendment.

When the Bill as passed by the Council has been signed by the President, it is submitted to the Governor for his assent, and, if assented to by him, it is submitted to the Government of India for the assent[3] of the Governor-General. If the Governor-General assents to it, it becomes an Act.

If the Governor returns the Bill as passed by the Council for its reconsideration, the point or points referred for reconsideration are put before the Council by the President, and are discussed and voted upon in the same manner as amendments to a Bill[4].

The member in charge of a Bill may withdraw it at any stage with the permission of the Council[5].

All communications on matters connected with any Bill must be addressed to the Secretary of the Council who must, if time permits, cause them to be printed and send a copy of them to each member, and must, further, refer them to the Select Committee, if any, on the Bill.[6]

A motion expressing want of confidence in a Minister or

[1] Bengal Legislative Council Standing Order 48.
[2] *Ibid.*, 50. But also see the Bengal Legislative Council Standing Order 51 in this connexion.
[3] *Ibid.*, 54.
[4] *Ibid.*, 55.
[5] *Ibid.*, 56.
[6] *Ibid.*, 57 and 58.

a motion disapproving the policy of the Minister in a particular respect may be made[1] in a Legislative Council with the consent of its President, and subject to the following restrictions, namely :—

Motion of non-confidence in Ministers.

(*a*) 'leave to make the motion must be asked for after questions and before the list of business for the day is entered upon ; (and)

(*b*) the member asking for leave must, before the commencement of the sitting of the day, leave with the Secretary (of the Council) a written notice of the motion which he proposes to make.'

If the President is of opinion that the motion is in order, he must read the motion to the Council and request those members who are in favour of leave being granted to rise in their places. If not less than a certain minimum number[2] of members rise accordingly, the President must

[1] P.L.R., 12A. This Rule has been made in accordance with the following recommendations of the Reforms Enquiry Committee, 1924 :

'In order to enable the *responsibility of Ministers to the Councils* to be enforced, provision should be made in the provincial Legislative Council Rules for the following classes of motions :—

(*a*) a motion of no confidence ; (and)

(*b*) a motion questioning a Minister's policy in a particular matter.'

'The former motion, if carried by the Council, should necessarily involve the resignation of the Minister, or of the whole Ministry if it holds itself to be jointly responsible in regard to the particular question. The carrying of a motion falling within the second class should not necessarily involve the resignation of the Minister. It should depend upon the magnitude of the question in issue and the importance which the Minister attached to his policy in regard to it. We consider that it will further be necessary to provide that such motions are not frivolously moved, but that, when set down on the paper, they should come up for discussion at an early date. . . . For these purposes we would therefore provide . . . that if the person who gives notice of the motion is able to show that he has the support of a prescribed number of the members of the Council who are present, the President shall direct that the motion shall be included in the list of business on a day not more than 10 days after the date of notice. It will be desirable to prescribe the number of members whose support shall be necessary before the President is required to fix a day for the discussion of the motion'.—Majority Report, pp. 68–69, and also p. 111.

[2] The minimum number in Bengal is 46; in Madras, 42; in

declare that leave is granted and that the motion will be taken on such day, not being more than ten days from the day on which leave is asked for, as he may appoint. If, however, less than the minimum number rise, the President must inform the member asking for leave that he has not obtained the leave of the Council.[1] It may be stated here that no such preliminary approval of a motion of want of confidence in a Minister or in the Ministry is required in the English House of Commons, and that, therefore, the Indian law in this respect is a departure from the English practice.

A member who has resigned the office of Minister may, with the consent of the President of the Legislative Council concerned, make a personal statement in explanation of his resignation. Such statement must be made after questions have been disposed of and before the list of business for the day is taken up. No debate will be in order on such statement, but a member of the Government concerned will be entitled to make a statement pertaining to it[2].

In regard to communications between the Governor and his Legislative Council, the practice, generally speaking, is as follows :—

Communications from the Council to the Governor are to be made through the President 'by formal address after motion made and carried in the Council.'[3] And communications from the Governor to the Council may be made (i) by a speech, and (ii) by a written message read to the Council by the President.

the United Provinces, 40 ; in Bombay, 36 ; in Burma, 34 ; in Bihar and Orissa, 34 ; in the Punjab, 30 ; in the Central Provinces, 22 ; and in Assam, 16.—*The Gazette of India*, October 30, 1926, Part 1.

[1] Provincial Legislative Rule 12A. [2] *Ibid.*, 10A.

[3] In Bengal communications from the Council to the Governor must be made—

(i) by formal address, after motion made and carried in the Council ; and

(ii) through the President.

CHAPTER XVIII

THE 'HOME' GOVERNMENT[1]

The Home administration of Indian affairs before 1858—Changes introduced by the Act of 1858—The Secretary of State for India—The Council of India—Functions of the Council—Procedure at meetings of the Council—Correspondence between the Secretary of State and India—Information to Parliament as to orders for commencing hostilities—Utility of the Council of India—The Crewe Committee on the Council—Prof. Keith's views about the Council—Mr. B. N. Basu's views about the Council—The Joint Select Committee and the Council—The Council, an anachronism—The India Office and its organization—Audit of Indian accounts in the United Kingdom—High Commissioner for India—His appointment—His duties—Cost of the Home administration: original arrangement—The Joint Report on the question of cost—The Crewe Committee's views on the same—The present arrangement—Its defect.

The Home administration of Indian affairs before 1858.

Down to 1784 the affairs of the East India Company were managed in England by the Court of Directors and the General Court of Proprietors of the Company. The East India Company Act of 1784, better known as Pitt's Act of 1784, established what might be regarded as the dual system of Government which lasted till the year 1858. It created a Board of six Commissioners for the affairs of India, popularly known as the Board of Control, 'with full power and authority to direct all operations and concerns relating to the civil and military government and revenues of India.'[2] The Board was to consist of one of the Secretaries of State for the time being, the Chancellor of

[1] See in this connection Seton's *India Office*.
[2] *The Imperial Gazetteer of India*, vol. iv, p. 34

the Exchequer and four other Privy Councillors. The members of the Board were to have 'access to all papers and muniments' of the Company and to be 'furnished with such extracts or copies thereof' as they might require.[1] The Directors were required to pay due obedience to, and to be bound by, such orders and directions as they would receive from the Board, touching the civil and military government and revenues of the British territorial possessions in the East Indies.[2] The system of Government created by this Act is thus described by the Committee on the Home Administration of Indian Affairs [3] :— 'The executive management of the Company's affairs was in the hands of a Court of Directors, who were placed in direct and permanent subordination to a body representing the British Government and known as the Board of Control. The functions of the Board were in practice exercised by the President, who occupied in the Government a position corresponding to some extent to that of a modern Secretary of State for India. The Board of Control were empowered "to superintend, direct and control all acts, operations, and concerns which in anywise relate to the civil or military government or revenues of the British territorial possessions in the East Indies." Subject to the superintendence of the Board of Control, the Directors conducted the correspondence with the Company's officers in India, and exercised the rights of patronage in regard to appointments.' According to Sir George Chesney[4], the President of the Board[5] of Control was always a member of the Cabinet.

[1] The East India Company Act, 1784, Section 11. [2] *Ibid.*

[3] *Vide* para. 8 of the Report (1919) of the Committee.—' The Committee was appointed to enquire into the organization of the India Office and the relations between the Secretary of State in Council and the Government of India'.—Para. 1 of the Report.

[4] *Indian Polity*, p. 360. [5] Its members used to lose office on change of Ministry.—Seton, *India Office*, p. 13.

Changes introduced by the Act of 1858.

The Government of India Act of 1858 abolished the dual system of Government prevailing from the year 1784, by transferring the administration of India from the Company to the Crown and, among other things, authorized the appointment of an additional Secretary of State who was empowered to exercise, except where otherwise provided, the powers formerly exercised by the Court of Directors, the Court of Proprietors, or by the Board of Control in relation to the government and revenues of India.[1] Besides, it created a Council to assist the Secretary of State in the performance of his duties. This Council was formally styled 'The Council of India.' Thus came into existence the Secretary of State for India and his Council. Describing the change effected by the Act of 1858 in the Home administration of Indian affairs, the Committee, to which reference has been made before, stated[2] that in general, the dual functions of the Board of Control and the Court of Directors were vested in the corporate body known as the Secretary of State for India in Council. The substitution of administrative responsibility on the part of the Government for the superintendence it had formerly exercised caused a redistribution of functions in which the lines of inheritance became to some extent obscured; but the persistence of the dual principle could still be traced in the corporate activities of the Secretary of State in Council.

The territories for the time being vested in His Majesty in India are, in the words of the Government of India Act, governed by and in the name of His Majesty the King-Emperor. The authority of the Crown over India

[1] Section 3 of the Act.

[2] Report of the Committee on the Home Administration of Indian Affairs, para. 9. This Committee was presided over by the Marquess of Crewe. We shall in future refer to this Committee as the Crewe Committee

is exercised through the Secretary of State[1] for India who 'is appointed, like other Secretaries of State, by the delivery to him of the seals of office.' He is a member of Parliament and is responsible to it 'in accordance with constitutional practice for his official acts'. As a Cabinet Minister and member of the Privy Council, he is the constitutional adviser of the Crown in matters relating to India. He appoints[2] two Under-Secretaries, one permanent, who is recruited from the Civil Service, the other Parliamentary, who changes with the Ministry and who usually represents him in that House of Parliament of which he does not happen to be a member[3]. Ordinarily he remains in office so long as the Cabinet of which he is a member remains in power. He may, however, be forced to resign his office on account of his personal errors in the conduct of his department. Appointments by the Crown to offices in India are made on his advice.[4]

The Secretary of State for India.

The Council of India, as originally constituted under the Act of 1858, consisted of fifteen members, eight of whom were appointed by the Crown and seven elected by the Court of Directors[5] of the East India Company. The constitution of the Council has been altered from time to time. Under the existing Act[6] the Council is to consist of such number of persons, not less

The Council of India.

[1] 'The office of Secretary of State is constitutionally a unit, though there are five (now six practically) officers. Hence any Secretary of State is capable of performing the functions of any other, and consequently it is usual and proper to confer statutory powers in general terms on "a (or "the") Secretary of State", an expression which is defined by the Interpretation Act, 1889, as meaning one of Her Majesty's principal Secretaries of State.'—Ilbert, *The Govt. of India*, 1916, p. 172. *Vide* also Marriott's *English Political Institutions*, pp. 108-9.

[2] Ilbert, *The Government of India*, p. 172.

[3] The case of Dr. Drummond Shiels (Lab.), Parl. Under-Secretary, is an exception.

[4] It is said that only the Viceroy is appointed on the recommendation of the Prime Minister. See note 2 on page 348.

[5] Either from among its own members or from the ex-Directors of the Company.

[6] Section 3 (1) of the Act.

than eight and not more than twelve, as the Secretary of State may determine. At least one-half of the members of the Council must have served or resided in India for not less than ten years and must not have last left India more than five years before their appointment to the Council.[1] The right of filling any vacancy in the Council is vested in the Secretary of State.[2] The ordinary term of office of a member is five years, but he may be reappointed by the Secretary of State for a further term of five years 'for special reasons of public advantage.'[3] In any such case, however, the reasons for the reappointment must be laid before both Houses of Parliament in the form of a minute. It is open to a member of the Council to resign his office and any member of the Council may be removed from his office by the Crown on an address of both Houses of Parliament. Every member receives an annual salary of twelve hundred pounds. But if any member was, at the time of his appointment, domiciled in India, he is entitled, in addition to his salary, to an annual subsistence allowance of six hundred pounds.[4] No member of the Council is capable of sitting or voting in Parliament.[5]

The Council of India conducts under the direction of the

[1] Section 3 (3) of the Act. [2] Section 3 (2) of the Act.

[3] Section 3 (5) of the Act.

[4] There are now three Indian members on the Council, each of whom receives, in addition to his salary, an annual subsistence allowance of six hundred pounds. Mr. Montagu regarded it 'as equitable to extend to Indians holding office in England the system of "overseas allowance" just established for Englishmen in India.'—Seton, *The India Office*, p. 27.

[5] Speaking on this clause in the (first) Bill for the Better Government of India, 1858, Viscount Palmerston said: 'We do not propose that the Councillors shall be capable of sitting in Parliament. We think there would be great inconvenience in such an arrangement; that they would become party-men; that they would necessarily associate with one side or the other in this House, and that, with changes of Administration, the relations between the President and the Councillors might then become exceedingly embarrassing.' *Vide* P. Mukherji's *Constitutional Documents*, vol. i, p. 156.

Secretary of State the business transacted in the United Kingdom in relation to the government of India and the correspondence with India.[1] The powers which are vested in the Secretary of State in Council and in the Council of India are exercised at meetings of the Council 'at which such number of members are present as may be prescribed by general directions of the Secretary of State.'[2] The Council may act in spite of any vacancy therein. It must meet as and when the Secretary of State directs, but there must be held at least one meeting of the Council in every month.[3] The Secretary of State is the President of the Council with power to vote. Any member of the Council may be appointed Vice-President thereof by the Secretary of State in Council, but any person so appointed may be removed from his office at any time by the Secretary of State.[4]

Functions of the Council.

At every meeting of the Council the Secretary of State, or, in his absence, the Vice-President, if present, or, in the absence of both of them, one of the members of the Council, elected by the members present at the meeting, presides. In case of an equality of votes at any meeting, the person presiding has a second or casting vote. Any act done at a meeting of the Council in the absence of the Secretary of State requires his written approval for its validity.

Procedure at meetings of the Council.

If there is a difference of opinion on any question at any meeting of the Council at which the Secretary of State is present, his decision is final except in those cases where the concurrence of a majority of votes is expressly required

[1] Section 5 of the Act.

[2] Section 6 of the Act. 'No one but the Secretary of State and the Members has a right to take part in the discussion, but the Under-Secretaries of State attend the meetings, and may be invited to make remarks.'—Seton, *The India Office*, 31 n.

[3] Section 8 of the Act. 'In practice regular weekly meetings have continued'.—Seton, *The India Office*, p. 26.

[4] Section 7 of the Act.

by the Act.[1] In case of such difference of opinion the Secretary of State may require his opinion and his reasons for it to be recorded in the minutes of the proceedings, and any member of the Council, who has been present at the meeting, may also require his opinion and his reasons for it to be similarly recorded.[2]

Committees of the Council.

For the more convenient transaction of business the Secretary of State is empowered to constitute Committees of the Council of India, and to direct what departments of business are to be under those Committees and how the business of the Secretary of State in Council or of the Council of India is to be transacted. Any order made or any act done in accordance with such direction is to be treated as being an order of the Secretary of State in Council.[3] To these Committees matters connected with the various branches of administration are referred before being finally placed before the Secretary of State in Council.[4]

Correspondence between the Secretary of State and India.

The Secretary of State in Council prescribes the procedure for correspondence between the Secretary of State and the Governor-General in Council or any local Government in India.[5] Before the Reforms every order or communication proposed to be sent to India had to be submitted to a meeting of the Council, or to be placed on the Table of the Council Room for seven days prior to its issue for the perusal of the members of the Council, unless it dealt with a 'secret' matter or the action

[1] Section 9 of the Act. 'No business can be brought before the Council of India except by the Secretary of State.'—Seton, *The India Office*, p. 35.

[2] Section 9 of the Act.

[3] Section 10 of the Act.

[4] *The Fifth Decennial Report*, pp. 51-52. 'The Committees of the Council correspond to, and work in close touch with, the several departments of the Office, but no Member is in charge of any department.'—Seton, *The India Office*, p. 35.

[5] Section 11 of the Act.

proposed to be taken was, in the opinion of the Secretary of State, 'urgently' required. The present simpler mode of conduct of correspondence with India was recommended by the Crewe Committee.[1] The reasons for the change suggested were thus stated by the Committee :—'Our second suggestion is that the Secretary of State should regulate by executive orders the mode of conduct of correspondence between the India Office and the Government of India and Local Governments. The issue of orders and communications has hitherto been regulated by the somewhat meticulous procedure prescribed by the Act of 1858; and we do not think we need justify our proposal to liberate the India Office from the restrictions imposed by a bygone age and to place it on the same footing as other Government Departments in this respect.'[2]

Information to Parliament as to orders for commencing hostilities.

If any order is sent to India directing the actual commencement of hostilities by His Majesty's forces in India, the fact must be, unless the order has in the meantime been revoked or suspended, brought to the notice of both Houses of Parliament within three months of the issue of the order, or, if Parliament is not sitting at the expiration of those three months, then within one month after the next meeting of Parliament.[3] This provision enables Parliament to have an 'early opportunity of calling upon the Government for explanation of the causes which had led to such orders.'[4]

[1] See para. 27 of the Committee's Report.

[2] 'Correspondence with India has been accelerated by an arrangement for the exchange of "official" letters between the Secretaries of India Office Departments and Secretaries to the Government of India on matters which could not be treated "demi-officially" and used to require a formal despatch on each side.'—Seton, *The India Office*, p. 38.

[3] Section 15 of the Act.

[4] See Viscount Palmerston's speech on the Government of India Bill, 1858—P. Mukherji's *Constitutional Documents*, vol. i, p. 157.

Utility of the Council of India.

In the course of his speech on the (third) Government of India Bill, 1858, the Earl of Derby stated[1] that, although it was expedient that the business (of the government of India) should be conducted by a high Ministerial officer . . . who should, like the holders of other offices in the Government, be appointed by the Crown and be responsible to Parliament, yet, inasmuch as it was impossible to conceive that any person so appointed would have sufficient knowledge and experience to discharge duties so various and so complicated as those connected with the administration of all the different provinces of India, it was necessary for the good government of India to associate with the Minister a Council, more or less numerous, by whom he might be assisted and advised. Thus the Council of India was created not to be, to quote the Earl of Derby again,[2] a screen between the Minister and Parliament as the Court of Directors might have been, but to give the Minister advice which, on his own responsibility, he would be at liberty either to accept or reject. In order to achieve this object, it was provided by the Act of 1858 that the major part both of the appointed and of the elected members of the Council must be persons who had served or resided in India for not less than ten years, and, with certain exceptions, who had not last left India more than ten years before the date of their appointment.[3] And it was further provided by the same Act that future appointments or elections to the Council should be so made that nine at least of its members must possess those qualifications.[4] Although the Council was established primarily with the object of 'providing a Minister of the Crown, usually without personal knowledge

[1] See P. Mukherji's *Constitutional Documents*, vol. i, p. 167.
[2] *Ibid.*, p. 168.
[3] Section 10 of the Act of 1858.—Mukherji's *Constitutional Documents*, vol. i, p. 137.
[4] *Ibid.* Future elections were to be made by the Council itself.

of India, with experienced advice upon Indian questions', yet it was given a special function, which was presumably intended, according to the Crewe Committee,[1] 'to act as a counterpoise to the centralization of powers in the hands of the Secretary of State.' For instance, 'no grant or appropriation of any part of the revenues of India' could[2] be made under the Act of 1858 'without the concurrence of a majority of votes at a meeting of the Council'. Similarly, a few other specified matters could not be decided without the vote of a majority in Council. This is the case even now, subject, of course, to the provisions of the Government of India Act and the Rules made thereunder. But still the Council has been in the main an influential consultative body since its creation. It has had no power of initiative.

The Crewe Committee on the Council.

The majority of the members of the Crewe Committee recommended in their Report the abolition of the Council of India and the creation in its place of a statutory Advisory Committee to which the Secretary of State might refer such matters as he might determine for its advice and assistance.[3] They were of opinion that there was no constitutional function of the Secretary of State in Council which, under the new conditions, could not equally well be discharged by the Secretary of State.[4]

Professor Keith's views about the Council.

Professor A. Berriedale Keith, who was a member of the Committee, stated in his Minority Report[5] that he was opposed both to the continued existence of the Council of India and to the substitution for it of a statutory Advisory

[1] Para. 11 of its Report.

[2] This is the case even now, subject, of course, to the provisions of the Government of India Act and the Rules made thereunder.

[3] Paras. 20 and 23 of the Majority Report.

[4] Para. 21, *ibid*.

[5] Minority Report by Professor A. B. Keith on the terms of reference to the Committee on the Home Administration of Indian Affairs.

Committee as recommended by the majority of his colleagues. In regard to the Council of India, he held that the composition of the Council as representing Indian official experience at once qualified and tempted it to improve in detail, and in a sense to do over again, work already done in India.[1] Though fully conscious of the useful service rendered by the Council in the past, he was, however, of opinion that the conservatism natural to retired officials had acted sometimes as a barrier in the way of useful reform.[2] Besides, the natural tendency to delay in the action of the Government of India had been injuriously fostered by the delays of the India Office under the Council system of procedure.[3] And lastly, he pointed out from the evidence of Mr. Austen Chamberlain the tendency of the Council to move the Secretary of State to overrule the Government of India in minor matters.[4] In the absence of a permanent body anxious naturally to prove its utility by suggesting improvements on the proposals of the Government of India, it would, he hoped, become the rule for the Secretary of State to refrain from interference save when he was satisfied that some real principle was involved, in which event his intervention would carry all the more weight because his

[1] Para. 31 of the Report by Professor Keith.
[2] *Ibid.*
[3] Para. 31 of the Report by Professor Keith.
[4] Para. 34 of Prof. Keith's Report.

The Council, says Mr. Ramsay MacDonald, 'has not only to be consulted, it has to agree. The awkwardness of the situation which would be created if the Secretary (of State) forced his desires in the teeth of the opposition of his Council, even when he has constitutional authority for doing so, limits his authority in practice more than it is limited by law. . . . His action is limited by a Council which is more of the nature of a body of civil servants, but which has the power in the most essential matters of government to hamper the Secretary of State in doing what he thinks he ought to do. And this Council is non-representative; it acts of its own untrammelled will; it is not directly responsible to Parliament. This constitutional anomaly could not have existed for a generation if Parliament had taken an active interest in Indian affairs'.—*The Government of India*, pp. 47 and 48.

authority was not frittered away by interference in lesser matters.[1] As the Montagu-Chelmsford Scheme imposed on the Secretary of State a process of progressive abnegation of his power of superintendence, direction and control of the Government of India, the abolition of the instrument by which in the past a close and detailed control and revision had been exercised in respect of Indian affairs was in his opinion requisite as a necessary preliminary to, and a conclusive manifestation of the purpose of His Majesty's ministers to secure, the gradual realization of responsible government in British India.[2]

With regard to the advisory Committee, he said that the arguments adduced by the majority of his colleagues in favour of its creation did not appear to him capable of carrying conviction.[3] Under the reform scheme he had no hesitation in holding[4] that in the performance of his diminishing duties the Secretary of State should be able to obtain all the aid he would require primarily from the permanent staff of his department and from expert sources such as the brokers of the India Office and the Bank of England. In matters in which further advice was deemed necessary, e.g., currency questions or other issues involving special knowledge, he would have recourse to Committees appointed *ad hoc*.

Mr. Bhupendranath Basu's views about the Council.

Mr. Bhupendranath Basu, another member of the Crewe Committee, was also in favour of the abolition of the Council of India. He expressed himself in a separate note appended to the Majority Report as follows[5] :—' As regards the abolition of the Council of the Secretary of State, I agree with the Majority Report though not quite

[1] Para. 34 of Professor Keith's Report. [2] Para. 31, *ibid.*
[3] Para. 34 of Professor Keith's Report. [4] Para. 33, *ibid.*
[5] Note by Mr. B. N. Basu on the Report of the Committee on the Home Administration of Indian Affairs, para. 8. He has since died.

for the same reasons. My reasons are, firstly, that the abolition of the Council will naturally result in the Secretary of State leaving things more and more to the Government of India, and interfering only in matters of Imperial concern, and, secondly, it will thus throw a much greater responsibility on the Government of India, which in its own interests will have to share it with the representatives of the people, apart from any question of statutory obligation. We shall thus bring about greater co-operation and responsible association between the Government and the people, and greater reliance upon their conjoint action, and pave the way to the attainment of self-government in India without much dislocation of machinery.' He too was 'opposed to an Advisory Committee with no responsibility and no statutory functions.' Such a Committee would retain, according to him, the demerits of the present system, and would lose some, if not most, of its merits.[1]

'A habit,' says Mr. Ramsay MacDonald,[2] 'has more influence upon an Englishman than a reason.'

The Joint Select Committee and the Council.

In spite of these weighty opinions[3] in favour of the abolition of the Council of India, the Joint Select Committee recommended its continued existence. 'The Committee are not in favour of the abolition of the Council of India. They think that, at any rate for some time to come, it will be absolutely necessary that the Secretary of State should be advised by persons of Indian experience, and they are convinced that, if no such Council existed, the Secretary of State would have to form an informal one if not a formal one. Therefore, they think it much better to continue a body which

[1] Paras. 9-13 of Mr. Basu's Note.

[2] *The Government of India*, p. 45.

[3] Both the Indian National Congress and the All-India Muslim League demanded the abolition of the Council of India in their Joint Scheme of Indian Reforms adopted in their respective sessions held at Lucknow in 1916.

has all the advantages behind it of tradition and authority, although they would not debar the readjustment of its work so as to make it possible to introduce what is known as the portfolio system. They think, also, that its constitution may advantageously be modified by the introduction of more Indians into it and by shortening of the period of the service upon it, in order to ensure a continuous flow of fresh experience from India and to relieve Indian members from the necessity of spending so long a period as seven years in England.'[1]

The Council and the expenditure of Indian Revenues.

Whatever justification there might have been for the creation of the Council of India in 1858, and whatever justification there may be for its retention even under the Reforms Scheme, its indefinite continuance cannot be supported. It has stood in the way of useful reform in the past. It has not always exercised with scrupulous care and attention its so-called power of financial veto with regard to the expenditure of Indian revenues. As Professor Keith says in his Minority Report,[2] 'it is admitted that the evidence shows that, in matters decided by the British Cabinet, the Council of India in the past has felt bound to defer to the superior moral authority of that body, and has *pro tanto* abnegated the unfettered use of the powers conferred by the Government of India Act, 1915 (section 21); minor instances such as the charging to India of the cost of

[1] The Joint Select Committee's Report on Clause 31 of the Government of India Bill.

[2] Para. 36. In the Majority Report also we find :—

'The Council (of India) are by law in a position to obstruct his (i.e. the Secretary of State's) policy, or indeed the policy of His Majesty's Government, by interposing their financial veto if Indian revenues are affected ; but in practice they have acknowledged the supremacy of the Imperial Executive by accepting proposals communicated to them as decisions of the Ministry, in so far as those proposals raise issues on which they are legally competent to decide.'—para. 12.

a ball in honour of the Sultan of Turkey suggest that, even in matters not of Cabinet importance, the scrutiny of the Council has fallen short of any high standard of care for Indian interests.' Sir Malcolm Seton, Deputy Under-Secretary of State in the India Office, also writes:[1] 'Lord George Hamilton[2] has recorded that the House of Commons has on occasion objected to expenditure being thrown on India which the Secretary of State in Council had accepted as equitable.' Besides, the position of the Council has sometimes made it difficult for it to exercise effective control over the expenditure of Indian revenues. As Sir John Strachey, himself a member of the Council for ten years, says,[3] 'the powers . . . given to the Council in controlling expenditure are, however, far from being as great as at first sight they seem to be, for they can only be exercised in regard to the ordinary business of the administration. Orders involving large expenditure may be given by the Secretary of State without either the consent or the knowledge of the Council.'[4] Whatever may have been the real character of the control which the Council has hitherto

[1] *The India Office*, p. 69.
[2] Secretary of State for India from 1895 to 1903.
[3] See his *India* (3rd ed.), p. 68.
[4] 'But this (financial) check,' wrote Sir George Chesney, 'is practically rendered nugatory by the power given to the Secretary of State to deal with business alone in the Secret Department. . . . And thus while the sanction of the majority of that body is required to the granting of a gratuity or a pension of a few shillings a year recommended by the Government of India on behalf of some humble applicant, a Secretary of State may order, and has ordered, military operations to be undertaken by the Government of India, involving an expenditure of millions of money, not only without the sanction, but without even the cognizance of his Council.'—*Indian Polity*, pp. 371–72.

'When the Capital of India was moved from Calcutta to Delhi, a decision which has burdened the Indian finances with a still unterminated charge of many millions, the Council at the India Offic were not informed, until the matter had already been decided t the Cabinet, when either advice or protest on their part was useles' —Curzon, *British Government in India*, vol. ii, p. 119.

exercised, or has been allowed to exercise, over the expenditure of the revenues of India, we believe that we are correct in stating that, now since increased financial powers have been conferred upon the Indian legislative bodies and since those powers will be further increased in the immediate future, the usefulness of the Council as a body keeping Indian expenditure within legitimate limits must be of rapidly diminishing importance. The duty of safeguarding Indian interests in financial matters should rest with the Government of India and the Indian Legislature. The Council seems to us to be an anachronism at present, the sooner got rid of, the better for the government of India.[1] Now that Dominion status has been promised to India, it should be abolished as soon as possible. Let us hope that the day is not far distant when the office of Secretary of State for India will be merged in that of Secretary of State for Dominion Affairs.

The Council, an anachronism.

The establishment of the Secretary of State in Council is commonly known as the India Office. It was originally created by the Act of 1858. The officers on the Home establishment both of the East India Company and of the Board of Control formed the establishment of the first Secretary of State in Council.[2] He was authorized by the Act to submit, within six months of its commencement, a scheme for his permanent establishment.[3] As has been stated before, the Secretary of State

The India Office and its organization.

[1] The Council, according to Mr. Ramsay MacDonald, 'is a cumbersome machine of check and counter-check if it has any use at all. It destroys real Parliamentary interest without giving Indian control or expert political advice. . . . It is not government or advice by the expert, but by the official. It is an adjunct to bureaucracy, not to Indian opinion. It is a Civil Service imposed as a check upon a Legislature, and it becomes more and more anomalous as representative institutions in India are established and broadened.'—*The Government of India*, p. 50.

[2] Section 15 of the Act of 1858.—*Vide The Indian Constitution* by Iyengar, Appendix III. [3] *Ibid.*

has two Under-Secretaries, one of whom is permanent and the other Parliamentary. Some of his minor duties are delegated to these officers. There are, besides, one Deputy Under-Secretary, and two Assistant Under-Secretaries, one of whom is also the Clerk of the Council.[1] There are in the India Office now several departments: (1) Finance, (2) Military, (3) Political and Secret, (4) Public and Judicial, (5) Economic and Overseas, (6) Services and General, and (7) Public Works.[2] Some of its previous functions have been transferred to the High Commissioner for India. For each department in the office there are a Secretary and an Assistant Secretary, with a staff of clerks.[3] All appointments to the India Office are made by the Secretary of State in Council; but 'junior situations' in it must be filled in accordance with rules relating to appointments to similar situations in the Home Civil Service.[4] No addition may be made to the establishment of the Secretary of State in Council, or to the salaries of the persons on it, except by an order of the Crown in Council, to be laid before both Houses of Parliament within fourteen days of its issue, or if Parliament is not sitting at that time, then within fourteen days after the next meeting of Parliament.[5] The Secretary of State in Council may remove, however, any officer or servant belonging to his establishment. The Crown may, by warrant under the Royal Sign Manual, countersigned by the Chancellor of the Exchequer, grant to any officer in the India Office such compensation, superannuation or retiring allowance, or to his legal personal representative such gratuity, as may respectively be granted lawfully to

[1] *Whitaker's Almanack*, 1926, p. 196.

[2] Besides, there are Accounts and Records departments. Seton *The India Office*, p. 273; also *Whitaker's Almanack*, 1926.

[3] *The Imperial Gazetteer of India*, vol. iv, p. 39.

[4] Section 17 of the Act.

[5] *Ibid.*

persons on the establishment of a Secretary of State, or to the personal representatives of such persons.[1]

Audit of Indian Accounts in the United Kingdom.

Mention may be made in this connection of another officer who does not exactly belong to the establishment of the Secretary of State in Council, but whose functions are too important to be ignored —we mean the auditor of the accounts of the Secretary of State in Council. He is appointed by the Crown by warrant under the Royal Sign Manual, countersigned by the Chancellor of the Exchequer, and holds office during good behaviour.[2] He is empowered to appoint and remove his assistants. He examines and audits 'the accounts of the receipt, expenditure and disposal in the United Kingdom of all money, stores and property applicable for the purposes of the Government of India Act.'[3] The Secretary of State in Council must,[4] by the officers of his establishment, produce and lay before him all such accounts, accompanied by proper vouchers, and submit to his inspection all books, papers and writings having relation thereto. He may examine any such officer, being in the United Kingdom, in relation to such accounts, and may for that purpose require his presence before him. He must report to the Secretary of State in Council his approval or disapproval of those accounts with such remarks in relation thereto as he thinks fit; and he must specially note in his reports if any money arising out of the revenues of India has been appropriated to purposes other than those to which they are applicable.[5] Moreover, he must specify therein any defects, inaccuracies or irregularities which may appear in those accounts, or in the authorities, vouchers or documents relating thereto.[6] Finally, he must lay all his

[1] Section 18 of the Act.
[2] Section 27 of *ibid.*
[3] *Ibid.*
[4] *Ibid.*
[5] *Ibid.*
[6] *Ibid.*

reports before both Houses of Parliament, with the accounts of the year to which they relate.[1]

The auditor and his assistants are paid such salaries out of the revenues of India or out of moneys provided by Parliament as the Crown, by warrant countersigned by the Chancellor of the Exchequer, may direct. Besides, they are, in respect of superannuation or retiring allowance or gratuity, in the same position as if they were on the establishment of the Secretary of State in Council.[2]

High Commissioner for India.

Another important functionary closely connected with the Government of India in England is the High Commissioner for India. The appointment of a High Commissioner for India was provided for in the Act of 1919 in pursuance of a recommendation made by the Committee on the Home Administration of Indian Affairs. The Committee stated:[3] 'We are satisfied that the time has come for a demarcation between the agency work of the India Office and its political and administrative functions, and that the step would commend itself to all classes of opinion in India as marking a stage towards full Dominion status. Accordingly, we recommend that preliminary action should be taken with a view to the transfer of all agency work to a High Commissioner for India or some similar Indian Governmental representative in London. We suggest that, in the first instance, communications should be entered into with the Government of India with the object of transferring to the direct control of that Government the Stores Department and also the Accountant-General's Department (subject to any necessary reservations, including the retention of work connected with higher finance), and that the Government of India should at the same time be invited to make suggestions for

[1] Section 27 of the Act. [2] *Ibid*
[3] Para. 29 of the Majority Report.

the transfer to their control of any other agency business, such as that transacted by the Indian Students Department.' It has accordingly been provided by Section **29A** of the Government of India Act that the Crown may by Order in Council make provision for the appointment of a High Commissioner for India in the United Kingdom, and for the pay, pension, powers, duties and conditions of employment of the High Commissioner and of his assistants; and that the Order may further provide for delegating to the High Commissioner any of the powers previously exercised by the Secretary of State or the Secretary of State in Council in relation to making contracts, and may prescribe the conditions under which he must act on behalf of the Governor-General in Council or any local Government.

His appointment.

An Order of the Crown in Council, dated August 13th, 1920, has since been published.[1] Under it the Governor-General in Council may from time to time appoint, with the approval of the Secretary of State in Council, some person to be High Commissioner for India in the United Kingdom, and may with the like sanction remove or suspend any such person and appoint another in his place. The High Commissioner is to hold office for five years and is eligible for reappointment. The Governor-General in Council may grant him leave of absence at any time and appoint some person to act in his place during his absence. He is to receive a salary of three thousand pounds a year payable out of the revenues of India. He is not to be entitled to any pension in respect of his services as High Commissioner. But if a person in the Civil Service of the Crown in India is appointed High Commissioner, he may reckon his period of service as High Commissioner for the purpose of earning any

[1] See *The Gazette of India*, October 2, 1920, pp. 1881 82.

pension to which he is ordinarily entitled as a member of the Civil Service. He 'enjoys[1] the same status as his Dominion colleagues.' In the exercise of his powers and performance of his duties he will be subject to the direction and control of the Governor-General in Council.

His duties.

Subject to the provisions of the Government of India Act, the High Commissioner must—

(1) act as agent of the Governor-General in Council in the United Kingdom;

(2) act on behalf of local Governments in India for such purposes and in such cases as the Governor-General in Council may prescribe; and

(3) conduct such business relating to the government of India hitherto conducted in the office of the Secretary of State in Council, as may be assigned to him by the Secretary of State in Council.

He is empowered to make and sign, and if necessary seal, contracts in the name and on behalf of the Secretary of State in Council. He can appoint his own assistants. He must lay before the auditor of the accounts of the Secretary of State in Council accounts of the receipt, expenditure and disposal in the United Kingdom of all money, stores and property by him, accompanied by proper vouchers, and submit to the auditor all necessary papers having relation thereto; and he must, as soon as may be, transmit to the Governor-General in Council a copy of the report of the auditor on those accounts.

Action was taken under the Order shortly after its publication. On October 1st, 1920, the Stores Department, the Indian Students Department and certain minor matters were transferred from the India Office to the High Commissioner.[2] Further transfers of work were made on

[1] Seton, *The India Office*, p. 258.
[2] Report of the Indian Retrenchment Committee, 1922-23, p. 211.

April 1st, 1921, and on April 1st, 1922.[1] But the whole of the agency work of the India Office has not yet been transferred to the High Commissioner.[2] The Indian Trade Commissioner in London belongs to his staff. We may mention here that Sir William Meyer was appointed the first High Commissioner for India with effect from October 1st, 1920. He [3] was succeeded by Sir Dadiba Dalal of Bombay. On the latter's resignation in 1924, Sir Atul Chandra Chatterjee, K.C.I.E., I.C.S., was appointed High Commissioner.[4]

Cost of the Home Administration: original arrangement.

Ever since 1858 till the Reforms Scheme came into operation, the salaries of the Secretary of State for India, of his Under-Secretaries and of the members of his Council had been paid out of the revenues of India.[5] Similarly, the cost of the India Office had been paid out of Indian revenues with this difference only that, in pursuance of a recommendation of the Welby Commission (1895–1900),

[1] Report of the Indian Retrenchment Committee, 1922–23, p. 211.
The High Commissioner arranges for the probationary training of the officers of the All-India Services and 'their passage to India, and to his Office has been transferred all the work connected with the payment of civil leave allowances and pensions, as well as the arrangements for civil officers sent to Europe for courses of special study. . . . Amongst the functions that he has taken over comes the general supervision of India's participation in Imperial and International Exhibitions'.—Seton, *The India Office*, p. 259.

[2] *Ibid.*, pp. 257–59; also Rep., Ind. Ret. Com., p. 225.

[3] After his death in 1922 Mr. J. W. Bhore, I.C.S., acted as High Commissioner for six months.—Seton, p. 258.

[4] He was a member of the Viceroy's Executive Council at the time of his appointment to the office.

[5] The salaries of the Secretary of State, the Parliamentary Under-Secretary and the permanent Under-Secretary are, and have been in the past, £5,000, £1,500 and £2,000 a year respectively. In addition to his salary, the Secretary of State occupies, free of rent, the India Office building which has been built and maintained out of the revenues of India and for the repairs of which the Government of India has to pay. . . . (*Vide* Mr. (now Sir) Purshotamdas Thakurdas's 'Supplementary Note on India Office Expenditure,' para. 13, *Report of the Indian Retrenchment Committee*, p. 230.)

the British Treasury had latterly contributed £40,000[1] a year towards it. The inequity of this arrangement becomes obvious when we remember that the salary of the Colonial Secretary and the cost of his establishment have all along been paid by England. The authors of the Joint Report recommended that the Secretary of State's salary, like that of all other Ministers of the Crown, should be defrayed from Home revenues and voted annually by Parliament.[2] 'This will enable,' they stated,[3] 'any live questions of Indian administration to be discussed by the House of Commons in Committee of Supply. On previous occasions when this proposal has been made it has encountered the objection that it would result in matters of Indian administration being treated as party questions. Without entering into speculations as to the future of parties in Parliament we do not see why this result would follow from such a debate more than from the existing debate on the budget' 'It might be thought to follow,' they continued,[4] 'that the whole charges of the India Office establishment should similarly be transferred to the Home Exchequer; but this matter is complicated by a series of past transactions, and by the amount of agency work which the India Office does on behalf of the Government of India; and we advise that our proposed committee upon the India Office organization should examine it and, taking these factors into consideration, determine which of the various India Office charges should be so transferred, and which can legitimately be retained as a burden on Indian revenues.'

The Joint Report on the question of cost

In accordance with this recommendation the Crewe

[1] This contribution used to be made indirectly through some adjustments between the India Office and the Treasury in respect of certain divisible charges.—See *Legislative Assembly Debates*, January 16, 1923, pp. 1078–79; also the Inchcape Committee's Report, p. 239. For the Welby Commission, see page 316.

[2] *Montagu-Chelmsford Report*, para. 294. [3] *Ibid.* [4] *Ibid.*

Committee considered the question of the incidence of the cost of Home Administration as between Indian revenues and the British Exchequer. The majority of the members of the Committee stated in their Report as follows[1] :—

The Crewe Committee's views on the same.

'We understand that it is the intention of His Majesty's Government that the salary of the Secretary of State should, like that of all other Ministers of the Crown, be defrayed from Home revenues and voted annually by Parliament. Our main principles have already led us to distinguish the political and administrative duties of the Secretary of State, acting as a Minister, from the agency business conducted by the India Office on behalf of the Indian authorities. It appears to follow as a general conclusion that the charges incidental to the former should be met from British revenues. They form a normal part of the cost of Imperial administration, and should in equity be treated similarly to other charges of the same nature. . . . Charges on account of agency work would naturally continue to be borne by India, in whose interests they are incurred. The exact apportionment is clearly a matter of technical detail which is best left for settlement between the India Office and the Treasury. The principle that we would lay down is that, in addition to the salary of the Secretary of State, there should be placed on the Estimates (*a*) the salaries and expenses (and ultimately pensions) of all officials and other persons engaged in the political and administrative work of the Office, as distinct from agency work; (*b*) a proportionate share, determined with regard to the distinction laid down in head (*a*), of the cost of maintenance of the India Office; the exact sum payable under heads (*a*) and (*b*) to be determined by agreement between the Secretary of State and the Lords

[1] Majority Report, para. 32.

Commissioners of the Treasury from time to time. Any arrangement made under this scheme would supersede the adjustment agreed to between the India Office and the Treasury as a result of the recommendations of the Royal Commission on Indian Expenditure, over which Lord Welby presided. The India Office building and site and other similar property paid for in the past by Indian revenues, and now held by the Secretary of State for India in Council, would continue to be Indian property.'

The Joint Select Committee also recommended in its Report[1] that all charges of the India Office, not being 'agency' charges, should be paid out of moneys to be provided by Parliament.

The present arrangement.

As a consequence of all these recommendations it has been provided by the Government of India Act that 'the salary of the Secretary of State *shall* be paid out of moneys provided by Parliament, and the salaries of his Under-Secretaries and any other expenses of his department *may* be paid out of the revenues of India or out of moneys provided by Parliament;'[2] and that the salaries and allowances (where granted) of the members of the Council of India '*may* be paid out of the revenues of India or out of moneys provided by Parliament.'[3]

A departmental Committee, on which the British Treasury was represented, was appointed to go into the details of the apportionment of the India Office charges. It recommended that 'for a period of five years from April 1, 1920, the Treasury should make to the India Office an annual lump sum contribution, which would remain constant for that period and the amount of which would be equivalent to that part of the total estimated cost of the

[1] On clause 30, G. I. Bill, 1919.

[2] Section 2 (3) of the Act. The expressions 'shall' and 'may' should be noted.

[3] Section 3 (8) of the Act.

India Office for 1920-21 (less the salaries of the Secretary of State and the Parliamentary Under-Secretary of State) which is attributable to the political and administrative work of the India Office.'[1] The present arrangement[2] is as follows:—The salaries of the Secretary of State and of his Parliamentary Under-Secretary are paid out of the British revenues and a grant-in-aid in respect of the India Office is made by the Treasury. The grant-in-aid for 1920–21 was first fixed at £72,000 on the basis of the 1920–21 estimates;[3] 'but later in the year, on the basis of a revised estimate submitted by the India Office, it was fixed at £136,000[4] per annum for the period 1920–21 to 1924–25.' Subsequently, it was decided by the Secretary of State in Council in 1921–22 that the amount of this annual contribution by the Treasury should be reduced to £113,500 [5] a year with effect from 1922–23. The object of this reduction was to concede to the Treasury a proportionate share of certain economies anticipated in the estimates for 1922–23 and the following two years 'as a result of a reduction in the rate of "bonus" due to the fall in the cost of living.'

The Indian Retrenchment Committee[6] stated that this reduction had not taken fully into account the reorganization of the establishments then contemplated in the India Office

[1] See *Report of the Indian Retrenchment Committee*, p. 223. See also p. 212 and p. 221 of *ibid.*

[2] *Ibid.*, pp. 212–13, and also p. 224. 'At present the cost of the (Secretary of State's) department is shared between Great Britain and India, the latter meeting the expense of such proportion of the charges as would in any case fall upon the Government of India for business done in London.'—Seton, *India Office*, p. 2.

[3] But see also the Hon'ble Mr. (now Sir) Purshotamdas Thakurdas's Supplementary Note on this question in Rep., Ind. Ret. Com., p. 224.

[4] This amount does not include the indirect contribution of £40,000 a year by the Treasury, referred to on pages 313–14 *ante*. See Sir Basil Blackett's statement in *Legislative Assembly Debates*, January 16, 1923, vol. iii, No. 17, p. 1079.

[5] This amount is exclusive of the indirect contribution of £40,000, a year, referred to in the previous footnote. *Ibid.*

[6] See p. 213 of its Report.

on the lines laid down for the administrative offices of the British Government. It had ascertained that, if allowance had been made for this, the grant-in-aid would have been fixed at a sum of £122,000, representing a saving of £8,500 to Indian revenues. It had however no doubt that the Treasury would agree to the revision in the same way that it had accepted the reduced contribution offered by the India Office as stated above. But no such revision seems to have been necessary, as the provisional estimate of the India Office expenditure for 1923–24 showed, according to Sir Basil Blackett[1] (Finance Member), a reduction[2] of £20,000 in the above figure (i.e. £122,000) and as further reduction was anticipated in the estimates for 1924–25. It may be noted here that, as a result of further consideration of the question of the apportionment of the charge of the Home administration, the British contribution in 1926–27 towards the cost of the India Office amounted to £ 119,901.[3]

Its effect.

[1] *Legislative Assembly Debates*, January 16, 1923, p. 1079.

[2] This, together with the anticipated further reduction in 1924–25, enabled the deficiency in the Treasury contribution for 1922–23 to be fully recouped. *Ibid.*

[3] *Finance and Revenue Accounts of the Government of India for the year 1926-27*, p. 305.

We may also quote the following in this connection :

The English charges against Indian revenues under the head—General Administration—' consist mainly of the salaries and expenses of the Secretary of State's Council and his establishment ; and the charges of the office of the High Commissioner, who acts as the agent of the Governments in India in respect of the purchase of stores and certain other matters. The salaries of the Secretary of State and of the Parliamentary Under-Secretary of State are borne on the British Estimates and a lump sum contribution is also made to Indian revenues on account of the cost of staff employed at the India Office on non-agency functions. . . . *The contribution in the year 1926-27 amounted to £119,901.*' (The italics are ours).—*Ibid.*

CHAPTER XIX

THE 'HOME' GOVERNMENT—POWERS[1] OF THE SECRETARY OF STATE

Pre-Reforms relations between the Home Government and the Governments in India—Sir John Strachey's views on the same—The Joint Report on the same question—The present position—The Secretary of State's control over Transferred subjects—His control over Central and Reserved subjects—The Home Government and the fiscal policy of India—Power of the Secretary of State to sell, mortgage and buy property—Rights and liabilities of the Secretary of State in Council—Indian revenue accounts to be annually laid before Parliament—Imperial interference in Dominion legislation and administration.

Pre-Reforms relations between the Home Government and the Governments in India.

The Secretary of State for India has, even under the Reforms Scheme, very extensive powers [2] in relation to the administration of India. These powers are derived partly from the Government of India Act and partly from his position as a member of the British Cabinet. Some of these powers he exercises alone and some in concert with his Council. As a member of the Imperial Executive and as Parliament's responsible Minister in respect of the administration of Indian affairs, he holds even now a specially dignified and influential position in the government of our country. Before the Reforms, though wide powers had been delegated to the authorities in India as a matter of expediency, the ultimate authority was retained by the Secretary of State in Council as the head of the administrative system of British India. As the Crewe Committee said,[3] 'the Secretary

[1] See also in this connection Chapter XXII *post*.
[2] See in this connection *The India Office* (Ch. V) by Sir Malcolm Seton.
[3] Majority Report, para. 12.

of State in Council represented in fact the supreme element of expert control at the higher end of the chain of official administration.' According to the *Report*[1] *on Indian Constitutional Reforms*, all projects for legislation, whether in the Indian or provincial legislatures, had to be sent to the Secretary of State for approval in principle. Before him were laid all variations in taxation or other measures materially affecting the revenues and in particular the customs; any measures affecting the currency operations or debt; and, generally speaking, any proposals which would involve questions of policy or which would raise important administrative issues or would involve large or novel expenditure. 'To set out all the Secretary of State's specific powers,' wrote[2] the authors of the Report, 'would be a long task: but we may mention the construction of public works and railways; the creation of new appointments of a certain value, the raising of the pay of others, or the revision of establishments beyond a certain sum; grants to local Governments, or loans to Native States; large charges for ceremonial or grants of substantial political pensions; large grants for religious or charitable purposes; mining leases and other similar concessions; and additions to the military expenditure, as classes of public business in respect of which he has felt bound to place close restrictions upon the powers of the Governments in India.' He had[3] the power of giving orders to every officer in India, including the Governor-General, and the Governor-General in Council was required by law[4] to pay due obedience to all such orders as he might receive from the Secretary of State. The constitutional justification for

[1] *Montagu-Chelmsford Report*, para. 36.
[2] *Ibid.* See also in this connection the Report of the Royal Commission upon Decentralization in India (1909), vol. i, paras. 9 and 15.
[3] Vide *The Imperial Gazetteer of India*, vol. iv, p. 36.
[4] Section 33 of the Government of India Act, 1915.

vesting some of these powers in the Secretary of State was that, since the Government of India exercised immense powers over a vast and populous country, and there was no popular control over it in India itself, it was right that it should, in matters of importance, be made to feel itself amenable to Parliament's responsible Minister who was expected to exercise conscientiously the powers which had been entrusted to him by Parliament.[1]

What the exact nature of the relations between the Home Government and the Government of India was before the Reforms and to what extent the former interfered in the details of Indian administration it is difficult for us to state, having no intimate acquaintance with the working of the administrative machinery of India. We shall have to depend for our enlightenment in respect of this matter upon those who have authority to speak. Sir John Strachey who was a member of the Government of India for nearly nine years under five Viceroys, and afterwards a member for ten years of the Council of India, wrote on this subject as follows[2] :—

Sir John Strachey's views on the same.

'It is an error to suppose that the Secretary of State is constantly interfering in the ordinary work of Indian administration. The description of the Home Government given by Mr. J. S. Mill in the time of the East India Company is as applicable now as when he wrote :—" It is not so much an executive as a deliberative body. The Executive Government of India is, and must be, seated in India itself. The principal function of the Home Government is not to direct the details of administration, but to scrutinize and revise the past acts of the Indian Governments; to lay down principles and issue general instructions for their future guidance, and to give or refuse sanction to great political measures which are referred home for approval." The

[1] See *The Montagu-Chelmsford Report*, para. 36.
[2] *India : Its Administration and Progress*, pp. 70–71.

action of the Secretary of State is mainly confined to answering references made to him by the Government in India, and, apart from great political or financial questions, the number and nature of those references mainly depend on the character of the Governor-General for the time being. Some men in that position like to minimize personal responsibilities, and to ask for the orders of the Home Government before taking action. Others prefer to act on their own judgment and on that of their councillors. The Secretary of State initiates almost nothing. . . . . So far as the Secretary of State is a free agent, the foregoing observations require no qualification. He has no disposition to interfere needlessly in the details of administration in India. Pressure, however, not easy to resist, is sometimes brought to bear upon him.'

Similar views were expressed on this question by Sir Valentine Chirol in his famous book *Indian Unrest.*[1] He wrote: 'The Secretary of State exercises general guidance and control, but, as Mill laid it down no less forcibly, "the Executive Government of India is and must be seated in India itself." Such relations are clearly very different from those of principal and agent which Mr. Montagu[2] would apparently wish to substitute for them.'

[1] *Indian Unrest*, p. 310. The reader may be referred in this connection to Chapter XXVI of that book. The whole of that chapter is of absorbing interest.

[2] For Mr. Montagu's views referred to here, see p. 306 of *Indian Unrest* by Sir Valentine Chirol. Mr. Montagu stated in the course of one of his speeches in the House of Commons as Under-Secretary of State for India :—

'Lord Morley and his Council, working through the *agency* of Lord Minto, have accomplished much.'

See in this connection P. Mukherji's *Constitutional Documents*, vol. ii, Introduction, pp. xlv–xlvii.

Vide also *The Government of India* by Mr. Ramsay MacDonald, pp. 57–58.

We may note here what Sir Malcolm Seton, Deputy Under-Secretary of State in the India Office, says on the question of relations between the Secretary of State and the Viceroy :—

'Much harm has been caused by wrong-headed or ill-informed

Joint Report on the same question.

Perhaps the most authoritative statement of the pre-Reforms relations between the Home Government and the Government of India is to be found in the *Report on Indian Constitutional Reforms.* After stating the specific powers vested by law in the Secretary of State or the Secretary of State in Council in relation to the administration of this country, the authors of the Report write[1] :—'It has been, of course, impossible in practice that the affairs of a vast and remote Asiatic dependency should be administered directly from Whitehall ; and, as we have seen, large powers and responsibilities have always been left by the Secretary of State to the Government of India and again by the Government of India to local Governments. At the same time, the Secretary of State's responsibility to Parliament has set very practical limits to the extent of the delegation which he can be expected to sanction.'

Again, in another part of the Report they say [2]: 'The greater part of the duties of the Secretary of State and his Council consists in the control of the Government of India. . . . Obviously the intensity of control must vary with the interest shown by Parliament on whose behalf the Secretary of State exercises his powers. The relations between Simla and Whitehall vary also with the personal equation. If resentment has been felt in India that there has been a tendency on occasions to treat Viceroys of India as "agents" of the British Government, it is fair to add that

utterances suggesting that the control of the Home Government does, or ought to, reduce to the position of a mere subordinate agency the authority charged with the actual government of three hundred millions of the human race. In the last resort the will of the Imperial Government must prevail in this as in every other branch of Imperial affairs, but a Governor-General is no more a mere agent of the Secretary of State for India than a General commanding in the field is an orderly officer of the Secretary of State for War or of the Prime Minister.'—*The India Office*, p. 74.

[1] *Montagu-Chelmsford Report*, para 291. [2] *Ibid.*, para 35.

there have been periods when Viceroys have almost regarded Secretaries of State as the convenient mouthpiece of their policy in Parliament. Certainly there have been times when the power of the Government of India rested actually far less upon the support of the Cabinet and Parliament than on the respect which its reputation for efficiency inspired.'

Two things are clear from the views quoted above. Left to himself, the Secretary of State for India would seldom interfere in the details of Indian administration; and secondly, the extent of the Home interference in Indian affairs depended to a large extent upon the personality of the Viceroy and the Secretary of State.[1] One thing, however, was early[2] brought home to the authorities in India,

[1] It may be noted here that 'the Viceroy and the Secretary of State exchange weekly letters which are treated as confidential, although passages are sometimes communicated to their colleagues. This correspondence is supplemented by the interchange of telegrams between them, the bulk of which, relating to public affairs, are circulated to the members of Council, whether in India or in London. A portion, however, is in the nature of secret correspondence between the two heads of the Government, and need not be divulged to the colleagues of either.' In these letters 'each unburdens himself in accents of explanation, advice, encouragement, warning, appeal, protest or indignation, according as the situation may demand.'—Curzon, *British Government in India*, vol. ii, pp. 116–17 and also p. 129.

In the time of Lord Morley and also during the Great War, the practice of private communications by telegrams and letters, between the Viceroy and the Secretary of State, was 'carried to a point which amounted to a usurpation of the powers of their respective Councils and was inconsistent with the constitutional basis of Indian Government.' This practice was therefore severely criticised by the Royal Commission on the Mesopotamia Campaign of which Lord George Hamilton was the Chairman. The Commission stated *inter alia*: 'The substitution of private for public telegrams in recent years has apparently so developed as to become almost the regular channel of official intercommunication. This substitution tends to dispossess the (Executive) Council of the functions which by statute they are entitled to exercise. We have been informed by two Members of the Governor-General's Council that, according to their recollection, the Council was never consulted as to, nor were they privy to, the Campaign in Mesopotamia.'—*Ibid.*, pp. 117–18. It is hoped that the practice has been abandoned.

[2] This important principle was laid down by the Duke of Argyll,

namely, that the final control and direction of the affairs of India rested with the Home Government, and not with the authorities appointed and established by the Crown, under Parliamentary enactment, in India itself; and that the Government established in India was (from the nature of the case) subordinate to the Imperial Government at Home; and, further, that the Imperial Government must hold in its hands the ultimate power of requiring the Governor-General to introduce a measure, and of requiring also all the members of his Government to vote for it.

The position is somewhat different under the Reforms.

The present position. Subject to the provisions of the Government of India Act and the Rules made thereunder,—

(1) the Secretary of State now[1]—

(*a*) has and performs all such or the like powers and duties relating to the government or revenues of India, and has all such or the like powers over all officers appointed or continued under the Act as, if the Government of India Act, 1858, had not been passed, might or should have been exercised or performed by the East India Company, or by the Court of Directors or Court of Proprietors of the Company, either alone or by the direction or with the sanction or approbation of the Board of Control, in relation to that government or those revenues and the officers and servants of that Company, and also all such powers as might have been exercised by the Board of Control alone, and

(*b*) in particular, *may* superintend, direct and control all acts, operations and concerns which relate

Secretary of State for India, in a despatch (dated May 24, 1870), addressed to the Government of India during the Viceroyalty of Lord Mayo.—*Vide* Iyengar's *Indian Constitution*, p. 35, and also *Montagu-Chelmsford Report*, pp. 22–23.

[1] Sections 2 (1) and 2 (2) of the Act.

to the government or revenues of India, and all grants of salaries, gratuities and allowances, and all other payments and charges, out of or on the revenues of India; and

(2) the expenditure of the revenues of India, both in British India and elsewhere, is subject[1] to the control of the Secretary of State in Council, and no grant or appropriation of any part of those revenues, or of any other property coming into the possession of the Secretary of State in Council by virtue of the Government of India Act, 1858, or the Government of India Act, shall be made without the concurrence of a majority of votes at a meeting of the Council of India.

The word '*may*' in (1)(*b*) safeguards, to quote Sir Valentine Chirol,[2] the rights of the Crown and Parliament in regard to the administration of India. The phrase 'subject to the provisions of the Government of India Act' has a special significance now in view of the fact that large powers, specially financial and legislative, have been conferred upon the authorities in India by the Act and the Rules made thereunder. Nevertheless, under Sections 2 (1) and 2 (2)[3] of the Government of India Act, taken with Section 131 (1)[4] of the same Act, the powers of the Secretary of State or of the Secretary of State in Council in relation to the government of India are still very extensive. But the Act has provided for the relaxation of the control of the Secretary of State. It is laid down in Section 19A of the Act that the Secretary of State in Council may, notwithstanding anything in the Act, by Rule regulate and restrict the exercise of the

[1] Section 21 of the Act. [2] *Indian Unrest*, p. 308.
[3] See foot-note 1 on the preceding page.
[4] Section 131 (1) of the Act runs thus:
'Nothing in this Act (i.e., the Government of India Act) shall derogate from any rights vested in His Majesty, or any powers of the Secretary of State in Council, in relation to the government of India'.

powers of superintendence, direction and control vested in the Secretary of State and the Secretary of State in Council by the Act, or otherwise, in such manner as may appear necessary or expedient in order to give effect to the purposes[1] of the Government of India Act, 1919. Any Rules made under this Section relating to subjects other than Transferred must be approved in draft by both Houses of Parliament; or they will not be valid. And Rules relating to Transferred subjects made under this Section must be laid before both Houses of Parliament as soon as may be after they are made, and if an address is presented to the Crown by either House of Parliament within the next thirty days on which that House has sat after the Rules are laid before it praying that the Rules or any of them may be annulled, the Crown in Council 'may annul the Rules or any of them, and those Rules will thenceforth be void, but without prejudice to the validity of anything previously done thereunder.'

The Secretary of State's control over Transferred subjects.

The authors of the Joint Report recommended[2]: 'Now that His Majesty's Government have declared their policy of developing responsible institutions in India we are satisfied that Parliament must be asked to assent to set certain bounds to its own responsibility for the internal administration of that country. It must, we think, be laid down broadly that, in respect of all matters in which responsibility

[1] The purposes of the Government of India Act, 1919, are as follows :—

(1) the increasing association of Indians in every branch of Indian administration ;

(2) the gradual development of self-governing institutions, with a view to the progressive realization of responsible government in British India as an integral part of the Empire ; and

(3) the granting to the provinces of India in provincial matters the largest measure of independence of the Government of India, compatible with the due discharge by the latter of its own responsibilities.—See the Preamble to the Act of 1919. App. A.

[2] *Montagu-Chelmsford Report*, para. 291.

is entrusted to representative bodies in India, Parliament must be prepared to forgo the exercise of its own power of control, and that this process must continue *pari passu* with the development of responsible government in the provinces and eventually in the Government of India. . . . The Secretary of State would, we imagine, ask Parliament's assent to his declaring by statutory orders which he would be empowered to make under the Act that such and such subjects in the various provinces have been transferred; and when Parliament has assented to such orders the Secretary of State would cease to control the administration of the subjects which they covered.'[1] Similarly, the Joint Select Committee recommended that over Transferred subjects the control of the Governor-General in Council, and thus of the Secretary of State, should be restricted in future within the narrowest possible limits.[2] In accordance with these recommendations, the following Rule [3] has been made by the Secretary of State in Council under Section 19A of the Government of India Act:—

'The powers of superintendence, direction and control vested in the Secretary of State and the Secretary of State in Council under the Act or otherwise shall, in relation to Transferred subjects, be exercised only for the following purposes, namely:—

(1) To safeguard the administration of Central subjects;

(2) to decide questions arising between two provin-

[1] We may also note the following in this connection:—

'It is almost a truism to say that any extension of popular control over an official system of government must be accompanied by some relaxation of the bonds of superior official authority.'—*Montagu-Chelmsford Report*, para. 10.

[2] Joint Select Committee's Report on Clause 33 of the Government of India Bill.

[3] The Government of India Notification No. 835-G., dated December 14, 1920—*The Calcutta Gazette*, December 22, 1920.

ces, in cases where the provinces concerned fail to arrive at an agreement;

(3) to safeguard Imperial interests;

(4) to determine the position of the Government of India in respect of questions arising between India and other parts of the British Empire; and

(5) to safeguard the due exercise and performance of any powers and duties possessed by or imposed on the Secretary of State or the Secretary of State in Council, under or in connection with or for the purpose of the following provisions of the Act, namely, Section 29A, Section 30 (1A), Part VIIA, or of any rules made by or with the sanction of the Secretary of State in Council.' [1]

[1] Section 29A of the Act relates to the appointment of a High Commissioner for India, to the conditions of his employment and to the delegation of certain powers to him.—See pages 310-13 *ante*.

Section 30 (1a) of the Act runs thus:

'A local Government may, on behalf and in the name of the Secretary of State in Council, raise money on the security of revenues allocated to it under the Government of India Act, and make proper assurances for that purpose, and rules made under the Act may provide for the conditions under which this power shall be exercisable.' For the Local Government Borrowing Rules, see Appendix C.

Part VIIA of the Act relates to the Civil Services in India. See Chapter XXII.

'Commenting upon this Rule under Section 19A of the Act (i.e. S. 33 of the Act of 1919), the Joint Select Committee stated:—

"This rule (which, as already stated, is exactly parallel with Devolution Rule 49) is confined to relaxation of the Secretary of State's control over Transferred subjects, and the Committee consider that no statutory divestment of control, except over the Transferred field, is either necessary or desirable. It is open to the Secretary of State to entrust large powers, administrative and financial, to the Governor-General in Council and the provincial Governors in Council, and he will no doubt be largely influenced in deciding whether or not to require reference to himself in any given case or whether to interpose his orders when reference has been made, by the attitude of provincial public opinion as expressed in the Legislative Council. But these matters cannot be regulated by statutory rules, and any authority which the Secretary of State may,

Again, it is laid down in Devolution Rule 27[1] that, except in those cases[2] in which the previous sanction of the Secretary of State in Council or of the Governor-General in Council is required for including a proposal for expenditure on a Transferred subject in a demand for a grant, the local Government of a Governor's province will have power to sanction expenditure on Transferred subjects to the extent of any grant voted by the Legislative Council. It will also have power, under the same Devolution Rule, to sanction any expenditure on Transferred subjects which relates to the heads[3] enumerated in Section 72D (3) of the Act (i.e., to non-votable heads of expenditure), subject to the approval of the Secretary of State in Council or of the Governor-General in Council, if any such approval is required by any Rule for the time being in force. Commenting upon this Rule the Joint Select Committee stated[4] :

'It is the clear intention of the Act of 1919 that expenditure on transferred subjects shall, with the narrowest possible reservations, be within the exclusive control of the provincial legislatures and subject to no higher sanction save such as is reserved to the Governor by Section 11 (2) (*b*)[5] of the Act (which empowers him to authorize expenditure in cases of emergency). But some reservations are required. The Secretary of State in

decide to pass on to the official Governments in India will be a mere delegation of his own authority and responsibility, for the exercise of which in relation to central and reserved subjects he must remain accountable to Parliament". Second Report from the Joint Select Committee on the Government of India Act, 1919 (Draft Rules).'

[1] See Appendix B.

[2] The cases are mentioned in Schedule III to the Devolution Rules. See pp. 331–33 *post* ; see also Appendix B.

[3] Proposals for expenditure relating to those heads are not submitted to the vote of a Governor's Legislative Council. See p. 216 *ante*.

[4] Second Report from the Joint Select Committee on the Government of India Act, 1919 (Draft Rules).

[5] I.e. Section 72D (2) (*b*) of the Government of India Act.

Council must retain control over expenditure on trans-ferred subjects which is likely to affect the prospects or rights of the all-India services, which he recruits and will continue to control, and he must retain power to control the purchase of stores in the United Kingdom. But subject to these limitations, Ministers should be as free as possible from external control, and the control to be exercised over expenditure on transferred subjects should be exercised by the provincial legislature, and by that body alone.'

Accordingly, under Schedule III[1] to the Devolution Rules, the previous sanction of the Secretary of State in Council is necessary—

'(1) to the creation of any new or the abolition of any existing permanent post, or to the increase or reduction of the pay drawn by the incumbent of any permanent post, if the post in either case is one which would ordinarily be held by a member of an all-India service, or to the increase or reduction of the cadre of an all-India service ;

(2) to the creation of a permanent post on a maximum rate of pay exceeding Rs. 1,200 a month, or in Burma Rs. 1,250 a month, or the increase of the maximum pay of a sanctioned permanent post to an amount exceeding Rs. 1,200 a month or in Burma Rs. 1,250 a month ;

(3) to the creation of a temporary post with pay exceeding Rs. 4,000 a month, or to the extension beyond a period of two years of a temporary post or deputation with pay exceeding Rs. 1,200 a month or in Burma Rs. 1,250 a month ; [2]

[1] This Schedule relates to the *Transferred subjects* only.—App. B.

[2] 'If the holder of a temporary post created by the local Government, the rupee pay of which does not exceed Rs. 3,000 a month, would have drawn overseas pay in sterling had he not been appointed to this post, the local Government may permit the holder of that post to draw, in addition to the rupee pay sanctioned for the post, overseas pay in sterling not exceeding the amount to which he would have been entitled had he not been appointed to the temporary post.'—Sch. III to the Devolution Rules.

(4) to the grant to any Government servant or to the family or other dependants of any deceased Government servant of an allowance, pension or gratuity which is not admissible under rules made or for the time being in force under section 96B of the Act, except in the following cases :—

(*a*) compassionate gratuities to the families of Government servants left in indigent circumstances, subject to such annual limit as the Secretary of State in Council may prescribe; and

(*b*) pensions or gratuities to Government servants wounded or otherwise injured while employed in Government service or to the families of Government servants dying as the result of wounds or injuries sustained while employed in such service, granted in accordance with such rules as have been or may be laid down by the Secretary of State in Council in this behalf.'

Every application for the sanction of the Secretary of State in Council 'shall be addressed to the Governor-General in Council who shall, save as hereinafter provided, forward the same with his recommendations, and with such further explanations of the proposal as he may have seen fit to require from the local Government (concerned), to the Secretary of State in Council.

If the application relates to—

(1) the grant in an individual case of any increase of pay, or

(2) the creation or extension of a temporary post,'

the Governor-General in Council may sanction the proposal on behalf of the Secretary of State in Council, or may, and, if he dissents from the proposal, must forward the application with his recommendations, and with such further

explanations of the proposal as he may have thought fit to require from the local Government concerned, for the orders of the Secretary of State in Council.

The Secretary of State's control over Central and Reserved subjects.

We have in the preceding few paragraphs shown the extent of control which the Secretary of State or the Secretary of State in Council can exercise over the Transferred subjects. We shall now consider the nature of his control over the administration of the Reserved subjects and of the subjects, known as Central, which are under the administration of the Governor-General in Council. With regard to these subjects, there are no such statutory Rules providing for the relaxation of the control exercisable over them by the Secretary of State or by the Secretary of State in Council as there are in the case of the Transferred subjects The Joint Select Committee [1] was strongly opposed to any statutory divestment of control except over the Transferred field. It held that any authority which the Secretary of State might decide to pass on to the official Governments in India would be a mere delegation of his own authority and responsibility, for the exercise of which in relation to Central and Reserved subjects he must remain accountable to Parliament. Thus there may be delegation of financial authority to the Governments in India under the proviso to Section 21 of the Act. Under it a grant or appropriation may be made by them for any subject in accordance with provisions or restrictions prescribed by the Secretary of State in Council with the concurrence of a majority of votes at a meeting of the Council. Commenting on Devolution Rule 27[2], the Joint Select Committee stated [3]:

[1] Second Report from the Joint Select Committee on the Government of India Act, 1919 (Draft Rules).

[2] See p. 330 or Appendix B.

[3] Second Report from the Joint Select Committee on the Government of India Act, 1919 (Draft Rules).

'They think that it is unnecessary and undesirable to prescribe by statutory rules under the Act of 1919 the extent to which the Secretary of State in Council is prepared to delegate to provincial Governments his powers of control over expenditure on reserved services. Such delegation has always in the past been effected by orders of the Secretary of State in Council made in virtue of the powers conferred by the proviso to Section 21 of the Act of 1915, and the Committee recommend that this practice should be continued under the new regime. When the Act of 1919 comes into operation, an order under section 21 of the earlier Act would necessarily assume an entirely new complexion, in view of the large measure of control over appropriations for reserved services vested by the new Act in the provincial Legislative Councils, and such an order might by its provisions well recognize the principles to which the Committee alluded in their observations on clause 33 in their Report on the Bill. Thus the Secretary of State in Council might in some cases permit the Governors in Council to dispense with his previous sanction to proposed appropriations for new reserved expenditure if a resolution approving the same had been passed by the Legislative Council. But whatever arrangement of this kind the Secretary of State in Council might think fit to make, the result would be a mere delegation of the Secretary of State's statutory powers of control, and his responsibility to Parliament would and must remain undiminished.'

Rules[1] under Section 21 of the Act have been made by the Secretary of State in Council to the effect that certain classes of expenditure relating to Central and Reserved subjects may not be sanctioned[2] by the Governor-General in Council or by a Governor in Council, as the

[1] See Resolutions Nos. 1448-E.A., and 1449-A., Simla, September 29, 1922. *Vide The Gazette of India*, October 7, 1922, pp. 1214-18.

[2] See Appendix I.

case may be, without the previous sanction of the Secretary of State in Council. These Rules, which were first published on October 7, 1922, have superseded all previous Rules of a similar nature.

Rules relating to expenditure on Central and Reserved subjects.

Where the previous sanction of the Secretary of State in Council is required to any expenditure, it should ordinarily be obtained before the Legislative Assembly or the Legislative Council, as the case may be, is asked to vote supply to meet the expenditure. Departures from this rule may be made only in cases of extreme urgency, where the time available is so short that the required sanction cannot be obtained even by telegraph ; but in such cases of departure, a statement must be submitted to the Secretary of State in Council, ' showing all schemes for which supply has been asked before sanction has been obtained.'

Subject to these Rules and to the provisions of Section 67A[1] of the Government of India Act, the Governor-General in Council can authorize expenditure from central revenues upon subjects other than Provincial, and can also delegate, with the previous consent of the Finance Department, such authority on such conditions as he may think fit, either to an officer subordinate to him or to a local Government acting as his agent in relation to a Central subject.

Similarly, subject to those Rules and to the provisions of Section 72D[2] of the Act, a Governor in Council has full power to sanction expenditure upon Reserved subjects and, with the previous consent of the provincial Finance Department, to delegate such power on such conditions as he may consider fit, to any officer subordinate to him.

In regard to matters other than financial, relating to the Reserved and Central subjects, the following recommendations have been made by authoritative persons and bodies

[1] See Chapter XIII *ante*. [2] See Chapter XIV *ante*.

as to what should be the attitude of the Home Government towards them under the Reforms. The authors of the Joint Report said [1] :—

'Even as regards reserved subjects, while there cannot be any abandonment by Parliament of ultimate powers of control, there should . . . be such delegation of financial and administrative authority as will leave the Government of India free, and enable them to leave the provincial Governments free, to work with the expedition that is desirable. . . . We are agreed that a wider discretion ought henceforth to be left to the Governor-General in Council; and that certain matters which are now referred Home for sanction[2] might in future be referred merely for the information of the Secretary of State in Council. . . . It will follow in such cases in future that, when the policy of the executive Government in India is challenged, Parliament must be asked to accept the explanation that in accordance with deliberate policy the Government of India have been given discretion in respect of the topic in question and that for this reason the Secretary of State is not prepared to interfere with what has been settled in India. It is not part of our plan to make the official Governments in India less amenable to the control of Parliament than hitherto. It must be for Parliament itself to determine the limits which it will set to the exercise of its own powers. On the other hand, intervention by Parliament may involve intervention by the Government of India in matters which otherwise would be recognized as of provincial concern.'

[1] Joint Report, para. 292.

[2] 'Reference to the Secretary of State is still necessary before the Government of India introduces Bills which involve Imperial or military affairs or foreign relations, affect the rights of European British subjects or the law of naturalization, or concern the public debt or customs, currency, shipping, and certain other matters, but there has been marked decentralization of administrative finance, not only from the Supreme Government to the provinces but from Whitehall to Delhi.'—Seton, *The India Office*, pp. 84–85.

Next, the Committee on the Home Administration of Indian Affairs observed[1] in its Report :—

'It appears to us that the conception of the Reforms Scheme leads naturally to the acceptance of the principle . . . that where the Government of India find themselves in agreement with a conclusion of the Legislative Assembly, their joint decision should ordinarily prevail.'

And one[2] of its specific recommendations was as follows :—

'Where the Government of India are in agreement with a majority of the non-official members of the Legislative Assembly, either in regard to legislation or in regard to resolutions on the Budget or on matters of general administration, assent to their joint decision should only be withheld in cases in which the Secretary of State feels that his responsibility to Parliament for the peace, order and good government of India, or paramount considerations of Imperial policy, require him to secure reconsideration of the matter at issue by the Legislative Assembly.'[3]

Finally, the Joint Select Committee stated[4] :—

'The Committee have given most careful consideration to the relations of the Secretary of State with the Government of India, and through it with the provincial governments. In the relations of the Secretary of State with the Governor-General in Council the Committee are not of opinion that any statutory change can be made, so long as the Governor-General remains responsible

[1] *Vide* Majority Report, para. 13. [2] Para. 35, *ibid*.

[3] Another recommendation of the Committee was :—

'As a basis of delegation, the principle of previous consultation between the Secretary of State and the Government of India should be substituted in all cases in which the previous sanction of the Secretary of State in Council has hitherto been required.'—Majority Report, para. 35. See note 2 on page 336. See in this connexion *India's Parliament*, vol. viii, pp. 179-80

[4] *Vide* the Joint Select Committee's Report on Clause 33 of the Government of India Bill.

to Parliament, but in practice the conventions which now govern these relations may wisely be modified to meet fresh circumstances caused by the creation of a Legislative Assembly with a large elected majority. In the exercise of his responsibility to Parliament, which he cannot delegate to any one else, the Secretary of State may reasonably consider that only in exceptional circumstances should he be called upon to intervene in matters of purely Indian interest where the Government and the Legislature of India are in agreement.'

'This examination of the general proposition leads inevitably to the consideration of one special case of non-intervention. Nothing is more likely to endanger the good relations between India and Great Britain than a belief that India's fiscal policy is dictated from Whitehall in the interests of the trade of Great Britain. That such a belief exists at the moment there can be no doubt. That there ought to be no room for it in the future is equally clear. India's position in the Imperial Conference opened the door to negotiation between India and the rest of the Empire, but negotiation without power to legislate is likely to remain ineffective. A satisfactory solution of the question can only be guaranteed by the grant of liberty to the Government of India to devise those tariff arrangements which seem best fitted to India's needs as an integral portion of the British Empire. It cannot be guaranteed by statute without limiting the ultimate power of Parliament to control the administration of India, and without limiting the power of veto which rests in the Crown ; and neither of these limitations finds a place in any of the statutes in the British Empire. It can only therefore be assured by an acknowledgment of a convention. Whatever be the right fiscal policy for India, for the needs of her consumers as well as for her manufacturers, it is quite clear that she should have the same liberty to consider her interests as

Great Britain, Australia, New Zealand, Canada and South Africa. In the opinion of the Committee, therefore, the Secretary of State should, as far as possible, avoid interference on this subject when the Government of India and its Legislature are in agreement, and they think that his intervention, when it does take place, should be limited to safeguarding the international obligations of the Empire or any fiscal arrangements within the Empire to which His Majesty's Government is a party.'

'The relations of the Secretary of State and of the Government of India with provincial governments should, in the Committee's judgment, be regulated by similar principles, so far as the reserved subjects are concerned.[1] It follows, therefore, that in purely provincial matters, which are reserved, where the provincial government and legislature are in agreement, their view should ordinarily be allowed to prevail, though it is necessary to bear in mind the fact that some reserved subjects do cover matters in which the central government is closely concerned.'

The Home Government and the fiscal policy of India.

To what extent the above recommendations have been actually given effect to, it is difficult for us to say. In one respect, however, they appear to have been followed. The principle of fiscal autonomy for India has been definitely accepted by the British Government.[2] In the course of his reply to a deputation from Lancashire on the Indian

[1] Also note the following:—'It appears to us to follow from our general reasoning that in so far as provincial action comes under the cognizance of the Secretary of State, either directly or through the Government of India, he should regulate his intervention with regard to the principle which we have sought to apply to the working of the central Government, namely, that where the Government find themselves in agreement with a conclusion of the legislature, their joint decision should ordinarily be allowed to prevail.'—The Crewe Committee, Majority Report, para. 18.

[2] *Vide Report of the Indian Fiscal Commission*, 1921-22, p. 4.

import duty on cotton goods, Mr. Montagu stated[1] on March 23rd, 1921, as Secretary of State for India: 'After that Report by an authoritative Committee of both Houses and Lord Curzon's promise in the House of Lords, it was absolutely impossible for me to interfere with the right which I believe was wisely given and which I am determined to maintain—to give to the Government of India the right to consider the interests of India first, just as we, without any complaint from any other parts of the Empire, and the other parts of the Empire without any complaint from us, have always chosen the tariff arrangements which they think best fitted for their needs, thinking of their own citizens first'. In a Despatch, dated June 30th, 1921, the Secretary of State stated that he had, on behalf of His Majesty's Government, accepted the recommendation of the Joint Select Committee on the question of fiscal autonomy for India.[2] His words were[3]:

'The Secretary of State should, as far as possible, avoid interference on this subject when the Government of India and the Indian Legislature are in agreement, and it is considered that his intervention, when it does take place, should be limited to safeguarding the international obligations of the Empire or any fiscal arrangements within the Empire to which His Majesty's Government is a party.'

The Government of India's acceptance of the principle of discriminating protection as conducive to the best interests of India, the appointment of a Tariff Board, and

[1] *Report of the Indian Fiscal Commission*, p. 4. *Vide* also *Fiscal Policy in India* by Dr. P. N. Banerji, pp. 114-16.

[2] *Ibid.*

[3] See p. 381 of *India's Parliament*, vol. ii, prepared by the Director, Central Bureau of Information, Government of India. *Vide* also in this connection the debate in the Council of State on the resolution regarding 'Fiscal powers under Constitutional Reforms'. *Ibid.*, pp. 378-82.

the enactment in recent years of measures for the protection of Indian industries prove the fact that India now enjoys a certain[1] amount of freedom in respect of fiscal matters.

During the regime of Mr. Montagu's successor in office, the Home interference in Indian affairs appears to have increased. This, at least, we gather from the views of one who has a right to express an opinion on the question. In an article [2] published in the *Contemporary Review*, November, 1923, Sir Tej Bahadur Sapru, who was, till January 1923, a member of the Viceroy's Executive Council, wrote as follows:—

'It must be distinctly recognized that the Government of India is not an independent Government, and howsoever it may be denied, the fact remains that in all vital matters,

[1] See also in this connection the reply given by Lord Winterton, as Under-Secretary of State for India, to another deputation representing cotton textile interests, on March 29, 1922, in Dr. P.N. Banerji's *Fiscal Policy in India*, pp. 121–22, or in the *Indian Annual Register*, 1922–23, vol. ii, edited by Mr. H. N. Mittra, pp. 197–200. He stated among other things: 'I should like first of all to deal very briefly with the constitutional point that has been raised. I will at once say that *of course the ultimate financial responsibility* under the Government of India Act rests with the Secretary of State, but I think it will be generally admitted that the Government of India must have wide latitude in deciding the steps to be taken in particular instances. . . . If you accept my argument, real, complete, self-government must always be based on fiscal autonomy. However, do not let us raise that point at this moment. I would only venture to say with all respect that sooner or later, when this question comes to be the subject of public controversy and public debate, not perhaps in this Parliament but in a future Parliament, when the advance is again made, which, I suppose, we all hope will be made as anticipated by Parliament—then Parliament will have to make up its mind when the question is most emphatically brought up of the cotton interest of Lancashire, with all its magnificent record of service and devotion to the Empire, on which leg it stands, whether it is prepared to say it will grant complete fiscal autonomy to India or not.'—*The Indian Annual Register*, 1922–23, vol. ii, pp. 197–98.

This statement indicates rather a change of attitude on the part of the Home authorities, and is against the spirit of the recommendation of the Joint Select Committee on the question of fiscal autonomy for India. It does not appear, however, that the principle underlying it has been actually followed in practice.

[2] The article was entitled '*The Problem of India's Aspirations*.'

and sometimes even in unimportant ones, the policy for India is formulated not at Delhi, nor at Simla, but in Whitehall. . . . Frankly speaking, I am one of those who feel that the position in India would be ever so much easier, even under the present constitution, if the Government of India could be left to deal with the local problems independently, and if the control of Whitehall over India could be substantially relaxed.' This, then, was the position even after the introduction of the Reforms.

Power of the Secretary of State to sell, mortgage and buy property.

The Secretary of State in Council may,[1] with the concurrence of a majority of votes at a meeting of the Council, sell and dispose of any property for the time being vested in the Crown for the purposes of the government of India and raise money on any such property, and purchase and acquire any property.

Rights and Liabilities of the Secretary of State in Council.

As a corporate body, the Secretary of State in Council[2] may sue and be sued. Neither the Secretary of State nor any member of his Council is personally liable in respect of any contract or assurance 'made by or on behalf of the Secretary of State in Council, or any other liability incurred by the Secretary of State or the Secretary of State in Council in his or their official capacity.' Nor is any person executing

[1] Section 28 (1) of the Act.

Any property acquired in pursuance of this section must vest in the Crown for the purposes of the Government of India.—Section 28 (3), *ibid*.

[2] Section 32 (1) of the Act. See in this connection Ilbert's *Government of India* (third edition), pp. 196–202.

In England, since the King can do no wrong, 'he cannot be prosecuted criminally, or, without his own consent, sued civilly in tort or in contract in any court in the land. . . . If a person has a claim against the Crown for breach of contract, or because his property is in its possession, he may bring a Petition of Right, and the Crown on the advice of the Home Secretary will order the petition indorsed "Let right be done", when the case proceeds like an ordinary suit' —Lowell, *Government of England*, vol. i, p. 27.

any contract on behalf of the Secretary of State in Council personally liable in respect of the same. All such liabilities, and all costs and damages in respect thereof, will be borne by the revenues of India.[1]

Indian revenue accounts to be annually laid before Parliament.

Finally, the Secretary of State in Council must,[2] within the first twenty-eight days during which Parliament is sitting after the 1st of May in every year, lay before both Houses of Parliament detailed accounts of receipts and disbursements, both in India and elsewhere, for the financial year previous to that last completed and the latest estimate of the same for the last financial year, together with a statement exhibiting 'the moral and material progress and condition of India.'

Imperial interference in Dominion legislation and administration.

We have in a previous chapter referred to the financial powers of some of the Dominion Parliaments. We may note here, by way of contrast, the extent of the Imperial interference with affairs other than financial, of a self-governing Dominion. As regards legislation, though the Governor 'has an absolute discretion to refuse to assent to any and every Bill, practically this is never done save on ministerial advice.'[3] In administration he 'has no real control of any public officer, and . . . in effect cannot do any executive acts effectively without ministerial aid.'[4] 'The degree,' writes Professor Keith, 'to which the Imperial Government interferes in the affairs of a self-governing colony has steadily decreased, and now has probably reached its minimum, as it may safely be said that interference is so restricted as to render further restriction

[1] Section 32 (4) of the Act. [2] Section 26 of *ibid.*

[3] *Responsible Government in the Dominions* (1909), by Prof Keith, p. 167.

[4] *Ibid.*, page 183.

incompatible with the maintenance of the power at all.'[1] Similar views have been expressed by Professor Dicey 'The Imperial Parliament,' he writes,[2] 'now admits and acts upon the admission, that any one of the Dominions has acquired a moral right to as much independence, at any rate in regard to matters occurring within the territory of such Dominion, as can from the nature of things be conceded to any country which still forms part of the British Empire. . . . Any Dominion has now a full and admitted right to raise military or naval forces for its own defence. . . . The Imperial Government . . . is now ready at the wish of a Dominion to grant to such Dominion the power to amend by law the constitution thereof though created under an Act of the Imperial Parliament.'[3]

[1] *Responsible Government in the Dominions* (1909) by Prof. Keith, p. 184.

[2] See *Law of the Constitution* (eighth edition), Introduction, pp. xxx–xxxi.

[3] We may note in this connection what the Imperial Conference of 1926 laid down :

Great Britain and the Dominions '*are autonomous Communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations.*'

CHAPTER XX

THE GOVERNMENT OF INDIA

The Viceroy and Governor-General of India—The title 'Viceroy' has no statutory basis—History of the office of Governor-General—Position of the Governor-General—His powers—Origin of his overruling power—His powers during absence from his Council—His prerogative of mercy—His duties and responsibilities—His oaths.

The Governor-General in Council—Evolution of the Executive Council of the Governor-General—Its present constitution—Procedure followed at meetings of the Governor-General's Council—The present Executive Departments of the Government of India—The Foreign and Political Department—The Army Department—The Home Department—The Legislative Department—The Department of Railways and Commerce—The Department of Industries and Labour—The Department of Education, Health and Lands—The Finance Department—How the Council works : the original system—Introduction of the 'departmental' system—The present system—The Munitions Fraud Case and the resignation of Sir Thomas Holland : their constitutional significance—The Royal Commission upon Decentralization on the transaction of business of the Governor-General in Council—Nature of the Council, its irresponsible character—The Council Secretaries—Advantages and disadvantages of the appointment of Council Secretaries—Relations between the Government of India and the Provincial Governments before the Reforms—Pre-Reforms distribution of the functions of Government—How control was exercised by the central Government—The present position as regards the control exercised by the Government of India over local Governments—Central control over Transferred subjects—Central control over Reserved subjects—Duty of local Governments to supply information—Power to declare and alter the boundaries of provinces.

At the head of the Government of India is the Governor-General who has also, as the representative of the Crown

in India, borne the title of Viceroy since 1858. This title has no statutory basis, since it has as yet found no place in any Parliamentary enactment relating to India. The only designation employed in Acts of Parliament is that of Governor-General. The title was first[1] used in the famous Proclamation by Queen Victoria in 1858, which referred to Viscount Canning, who had already been appointed Governor-General by the Court of Directors, as 'Our first Viceroy and Governor-General.' 'None of the Warrants appointing Lord Canning's successors refers to them as "Viceroys"; and the title, which is frequently employed in Warrants[2] of Precedence, in the statutes[3] of the Indian Orders, and in public notifications, appears to be one of ceremony, which may most appropriately be used in connection with the State and social functions of the Sovereign's representative, for the Governor-General is the sole representative of the Crown in India.'[4]

The Viceroy and Governor-General of India.

The title 'Viceroy' has no statutory basis.

The origin of the office of Governor-General is to be traced to the year 1773. As has been stated before, until 1773 the three presidencies of Bengal, Madras and Bombay were, in each case, under a President or Governor and a Council composed of servants of the East India Company and were independent of one another. The Regulating Act of 1773

History of the office of Governor-General.

[1] The title was also used in the Royal Proclamation of December 23, 1919.

[2] See in this connection *The Gazette of India*, August 19, 1922, Part I, p. 1029.

[3] See *The Indian Year Book*, 1923, edited by Sir Stanley Reed, p. 592.

[4] *The Imperial Gazetteer of India*, vol. iv, p. 16.

'Where the Governor-General is referred to as the statutory head of the Government of India, he is designated Governor-General: where he is regarded as the representative of the Sovereign, he is spoken of as Viceroy.'—Curzon, *British Government in India*, vol. ii, p. 49.

provided for the appointment of a Governor-General and four Counsellors for the government of the Presidency of Fort William in Bengal and declared Warren Hastings, who had been appointed Governor of Bengal in 1772, to be the first Governor-General. Moreover, 'the said Governor-General and Council, or the major part of them,' were given by the Act certain powers of control and superintendence over the presidencies of Madras and Bombay. These powers of control were further emphasized and enlarged by Pitt's Act of 1784 and the Charter Act of 1793. Finally, the Charter Act of 1833 converted the Governor-General of Bengal in Council into the Governor-General of India in Council[1] and vested in the latter the superintendence, direction and control of the whole civil and military government of the Company's territories and revenues in India.[2] But it was not till 1854[3] when a Lieutenant-Governor was appointed, under the Charter Act of 1853, for the province of Bengal (including Bihar and Orissa) which had hitherto been administered directly by the Governor-General of India as the Governor thereof, that the Governor-General in Council assumed his 'present character of a general controlling authority' in British India.

Position of the Governor-General.

The Governor-General occupies in many respects a unique position in our constitutional system. Apart from his statutory powers, which are undoubtedly very great, as the head of the administration, he is, as Viceroy, to quote Mr. Ramsay MacDonald, 'the Crown visible in India, the ceremonial head of the sovereignty, the great lord.'[4] He 'is surrounded

[1] Section 41 of the Charter Act of 1833.—P. Mukerji's *Constitutional Documents*, vol. i.

[2] Section 39 of *ibid.*

[3] Before that, Agra had been carved out of the overgrown presidency of Bengal and constituted in 1836 a Lieutenant-Governorship, under an Act of 1835, in the name of the North-Western Provinces.

[4] *The Government of India* by Mr. J. Ramsay MacDonald, p. 57.
'And yet I desire to say on this parting occasion that I regard the

by pomp and awe; ceremony walks behind and before him, and does obeisance to him.'[1] Both his arrival at, and departure from, India are 'invested with special dignity and display.' He is appointed[2] by the Crown by Warrant under the Royal Sign Manual and usually holds office for a period of five years. The maximum annual salary that may[3] be paid to him under the Act is Rs. 2,56,000. He is

office of Viceroy of India, inconceivably laborious as it is, as the noblest office in the gift of the British Crown.'—Lord Curzon's speech at the Byculla Club.—*Lord Curzon in India*, vol. ii, p. 319.

Vide in this connection Lord Curzon's *British Government in India*, vol. ii, ch. xi.

[1] Ramsay MacDonald, *The Government of India*, p. 54.

[2] According to Ilbert, the appointment is made on the advice of the Prime Minister (*The Government of India*, p. 204). But Lord Curzon says :—

'I have often been asked the question by whom and in what circumstances the appointment to the Viceroyalty is made . . . . . . While the appointment is vested as a matter of course in the Sovereign, the respective parts that are played in the selection by the Prime Minister, the Secretary of State for India, and the Cabinet, depend not upon any law, written or unwritten, but upon the Prime Minister for the time being. I have known cases, and others are recorded in published Memoirs, where prolonged discussions took place in Cabinet upon the merits of a suggested candidate or candidates. I have known other cases where the Prime Minister consulted a few of his colleagues before making his submission to the Sovereign. Ordinarily the Secretary of State for India would be the first to be asked to offer suggestions. But I have known one case where he was not even informed until after the appointment had been made by the Prime Minister and the Sovereign in combination. The tendency, as Cabinets have grown in size to their recent unwieldy dimensions, is unquestionably to treat important appointments less and less as matters for Cabinet discussion, and more and more as falling within the province of the Prime Minister, relying upon such advice as he may choose to seek.'—*British Government in India*, vol. ii, p. 62.

[3] The Secretary of State in Council is empowered by the Act to fix the actual salary of the Viceroy within the statutory maximum. The actual salary has been fixed at Rs. 2,50,800 per annum. Besides, the Viceroy obtains an outfit allowance (for voyage and equipment) of £5,000 if, at the time of his appointment, he is resident in Europe, and an annual sumptuary allowance of Rs. 40,000 during his tenure of office. He is required to pay Income-tax in respect of his salary. But the allowances for his official journeys, 'the wages and pensions of the huge native establishments, the Private and Military Secretaries'

not subject (i) to the original jurisdiction of any High Court by reason of anything counselled, ordered or done by him in his public capacity only, or (ii) to the original criminal jurisdiction of any High Court in respect of any offence not being treason or felony; nor (iii) is he liable to be arrested or imprisoned in any suit or proceeding in any High Court acting in the exercise of its original jurisdiction.[1]

His powers.

'The Governor-General, or Viceroy, of India', wrote President Lowell, 'and the Czar of Russia are sometimes said to be the two great autocrats of the modern world'.[2] If we take into consideration the constitutional position of the Governor-General in the Government of India, this statement appears to be an exaggeration of facts even as they were at the time when President Lowell made it. But, still, the powers vested in the Governor-General by statute or otherwise are immense and various[3] even under the Reforms Scheme. We have, in preceding chapters, referred to those of his powers, which are in relation to the Indian legislatures, central and provincial, and to Acts passed by them. We have also discussed

Offices, and the maintenance of the Viceregal palaces, have always been a charge upon public funds.' See Curzon, *British Government in India*, vol. ii, pp. 99–100; also Ilbert, *Government of India*, 3rd Ed., p. 253, and *Finance and Revenue Accounts of the Government of India for the year 1926–27*.

[1] Section 110 of the Act. The Reforms Enquiry Committee held that if the immunity was to be maintained, it should be made complete, and that the Governor-General and the other high officials mentioned in Section 110(1) of the Act, should be exempt from the jurisdiction of all courts and not merely from the original jurisdiction of the High Courts.—Majority Report, para. 91 and also recommendation 2.

[2] Lowell, *The Government of England*, vol. ii, p. 421.

[3] 'The Viceroy,' says Mr. Ramsay MacDonald, 'performs three great functions. He personifies the Crown, he represents the Home Government, he is the head of the administration.'—*The Government of India*, p. 57.

"My information leads me to think that the position of the Viceroy is not at present so far impaired as to preclude him from still exerting the full weight of his authority."—Curzon, *British Government in India*, vol. ii, p. 114.

See also pages 108–14 of *ibid* in this connection.

before his power of legislation by the process of certification. We now propose to state some of the other powers specifically vested in him by the Act or otherwise. He may,[1] 'in cases of emergency, make and promulgate ordinances for the peace and good government of British India or any part thereof,' which will have the force of law for a period not exceeding six months. His power of making such ordinances is subject, however, to the same restrictions as the power of the Indian Legislature to make laws; and any ordinance so made by him may be disallowed by the Crown in Council and may be controlled and superseded by an Act of the Indian Legislature. The last limitation is, really speaking, no limitation at all, in view of the fact that no measure can be lawfully introduced into either Chamber of the Indian Legislature repealing or amending any Act or ordinance made by the Governor-General without his previous sanction. This power of making ordinances has been exercised several times.[2] He has power also to override the majority of his Council and act on his own responsibility with regard to any measure 'whereby the safety, tranquillity or interests of British India, or of any part thereof, are or may be, in his judgment, essentially affected.'[3] This power is rarely exercised. It was under this provision that Lord Lytton acted in March 1879, when he, in opposition to the decision of the majority of his Council, exempted from (import) duty the coarser kinds of English cotton goods, 'so that imports of all those qualities which could at that time be manufactured in India' might be left free.[4]

[1] Section 72 of the Act.

[2] In October, 1924, the Governor-General promulgated, at the instance of the Bengal Government, an ordinance to supplement the ordinary criminal law in Bengal. The ordinance was known as the Bengal Criminal Law (Amendment) Ordinance, 1924.

[3] Section 41 (2) of the Act.

[4] See *Report of the Indian Fiscal Commission*, 1921–22, para. 161.

Origin of his over-ruling power.

The origin of this overriding power of the Governor-General is interesting. Under the Regulating Act of 1773, if there arose any difference of opinion on any question brought before a meeting, the Governor-General and his Council were to be bound by the decision of 'the major part of those present.' As a consequence of this provision, Warren Hastings, who was made the first Governor-General by the said Act, was powerless before his Council. His policies were often frustrated and his decisions overruled by Francis, Clavering and Monson, three of his four Councillors, acting together in opposition to him. 'In 1776,' writes Sir Courtenay Ilbert,[1] 'he was reduced to such depression that he gave his agents in England a conditional authority to tender his resignation.' Though his difficulties disappeared, however, with the death of Monson in September, 1776, as he could now have his own way by means of his casting vote, yet the lesson taught by them was there. When Lord Cornwallis was appointed Governor-General in 1786, he made it a condition of his acceptance of the office that he should be allowed to overrule his Council, if necessary. Accordingly an Act was passed[2] in 1786, which remedied the defect of the Act of 1773 by empowering the Governor-General to override, in matters of grave importance, the decision of the majority of his Council and to act on his own responsibility. This power has been renewed in subsequent statutes and has been provided for, as we have already seen, in the Government of India Act.

The Governor-General, again, has certain powers[3]

[1] *The Government of India* (1916), p. 50. [2] *Ibid.*, 67.

[3] Section 43 of the Act. See *The Imperial Gazetteer of India*, vol. iv, p. 19, in this connection.

It may be of interest to note here that if any person appointed to the office of Governor-General, 'is in India on or after the event on which he is to succeed,' he may, if he thinks it necessary, exercise alone, before he takes his seat in Council, all or any of the powers

during absence from his Executive Council. Whenever the Governor-General in Council declares it to be expedient that the Governor-General should visit any part of India without his Council, he may be empowered by the former to exercise alone all or any of the powers of the Governor-General in Council. Further, he may, during his absence from the Executive Council, issue, if he thinks it necessary, on his own authority and responsibility, any order, which might have been issued by the Governor-General in Council, to any local Government, or to any officers or servants of the Crown acting under the authority of any local Government without previously communicating the order to the latter. In any such case he must forthwith send a copy of the order issued to the Secretary of State and to the local Government concerned with his reasons for making the same. This particular power of the Governor-General may be suspended by the Secretary of State in Council.

Powers of the Governor-General during absence from his Council.

He usually keeps in his own hands the Foreign and Political Department which 'transacts all business connected with external politics, with frontier tribes and with the Native States in India.' As we shall have occasion later to refer to this matter, we do not propose to discuss it here.

He is in charge of the Foreign Department.

The Governor-General, like colonial Governors, enjoys now the prerogative of pardon under the revised Instrument of Royal Instructions issued to him. Clause 5 of the Instrument[1] runs as follows:—

His prerogative of mercy.

'And we do hereby authorize and empower Our said Governor-General in Our name and on Our behalf to grant

which might be exercised by the Governor-General in Council. —Section 89 of the Government of India Act.

[1]See Appendix N.

to any offender convicted in the exercise of its criminal jurisdiction by any Court of Justice within Our said territories a pardon either free or subject to such lawful conditions as to him may seem fit.'

According to Sir Courtenay Ilbert,[1] the royal prerogative of pardon was formerly not expressly conferred upon the Governor-General by his warrant of appointment. The Governor-General in Council, however, had the power of remitting sentences under the Code of Criminal Procedure.

The delegation of the prerogative of pardon to the Governor-General does not diminish, however, 'the right of the Crown to grant pardons directly, on the advice of the Imperial Ministry, since the delegation is a voluntary act, and cannot bind or fetter the discretion of the Crown.'[2] According to Professor Keith, in a self-governing Dominion 'in all cases save those of death sentences the Governor must accept ministerial advice, unless either imperial interests are concerned or he is prepared to find other Ministers; but in the case of death sentences he must exercise his personal discretion, and cannot relieve himself of responsibility by relying on ministerial advice.'[3] In our country the question of granting pardon on ministerial advice has not yet arisen for obvious reasons, and the exercise of the royal prerogative of mercy is, in the present circumstances, presumably left to the personal discretion of the Governor-General himself.

His powers regarding some Indian appointments.

Except in the case of Bengal, Bombay or Madras, the Governor of a province is appointed by the Crown after consultation with the Governor-General. The Governor-General can appoint a Deputy-Governor to administer a part of a Governor's province.[4] He has also the power to appoint,

[1] *The Government of India* (1916), p. 203.
[2] *Responsible Government in the Dominions* by Professor Keith (1909), p. 237. [3] *Ibid.*, p. 239. [4] Sec. 52A (1) of the Act.

with the approval of the Crown, Lieutenant-Governors and the members of their Executive Councils, if necessary. Besides, he may, at his discretion, appoint, from among the members of the Legislative Assembly, Council Secretaries who will hold office during his pleasure and discharge such duties in assisting the members of his Executive Council as he may assign to them.

Titles of Honour.

He may confer certain titles[1] of honour either as hereditary distinctions or as personal distinctions.

Finally, the Governor-General has recently[2] been empowered by the King to suspend, with the concurrence of the Secretary of State, from the exercise of his office any person appointed by the Crown or on its behalf to an office in India, against whom misbehaviour may have been alleged, and to constitute a tribunal to enquire into the truth of such allegation in order that Royal pleasure may be signified on its finding.

His duties and responsibilities.

If the Governor-General has certain specific powers, he has also certain specific obligations enjoined upon him, and if his powers are great, no less great is his responsibility. 'In constant and intimate communication,' writes Sir George Chesney, 'with the different governments and administrative agents throughout the country, as well as with the Secretary of State at home; with the immediate charge of diplomatic business within and without the Empire, from which some cause for anxiety is never absent; loaded, in addition, with the burden of ceremonial duties, especially

[1] These titles are: Maharaja, Nawab, Raja, Shams-ul-ulama, Mahamahopadhyaya, Aggamahapandita, Diwan Bahadur, Sardar Bahadur, Khan Bahadur, Rai Bahadur, Rao Bahadur, Sardar Sahib, Khan Sahib, Rai Sahib, Rao Sahib, and a few Burmese titles.—*Vide The Gazette of India*, Extra., July 3, 1926.

[2] See the Government of India's Home Department Notification No. F.—476/26, dated the 7th August, 1926.

in connection with the Chiefs and Princes of a country where ceremonial and etiquette possess an exaggerated degree of importance, duties ever increasing as the means of travel and communication improve; the Governor-General of India has literally hardly ever an hour to call his own, and the office involves the carrying of a sustained burden of business, high pressure, and anxiety which only great powers and public spirit can sustain unimpaired for even the few years of a Viceroy's reign[1].'

Constitutionally, the position of the Governor-General is one of subordination to the Secretary of State.[2] And though in actual practice the relations between them may be largely determined by personal factors and though constitutional usages and understandings may to a certain extent obscure their exact legal position, yet the subordination is there and the politically inferior position of the Governor-General cannot be denied. He is, for instance, required by the revised Instrument of Royal Instructions, to which we have already referred, to obey the directions of the Secretary of State. Thus begins the Instrument[3] :—

'Whereas by the Government of India Act it is enacted that the Governor-General of India is appointed by Warrant under Our Royal Sign Manual, and We have by Warrant constituted and appointed a Governor-General to exercise the said office *subject to such instructions and directions*[4] as he, or Our Governor-General for the time being, shall from time to time receive or have received under Our Royal Sign Manual or under the hand of one of Our Principal Secretaries of State, etc. . . . .'

[1] *Indian Polity*, p. 132. See *Lord Curzon in India* edited by Sir Thomas Raleigh, vol. ii, pp. 315–17; also Sir William Hunter's *The Earl of Mayo*, pp. 91–94.

[2] 'The Viceroy is directly subordinate to the Secretary of State for India and his Council—a subordination at which many Indian rulers have openly chafed and which by some has been found insupportable.'—Curzon, *British Government in India*, vol. ii, p. 110.

[3] See Appendix N.

[4] The Italics are ours.

It appears that the position in this respect has remained unchanged since 1858. For example, we find the following in Queen Victoria's Proclamation of that year :—

'And We, reposing especial trust and confidence in the loyalty, ability and judgment of Our right trusty and well beloved Cousin and Councillor, Charles John Viscount Canning, do hereby constitute and appoint him, the said Viscount Canning, to be Our first Viceroy and Governor-General in and over Our said territories, and to administer the government thereof in Our name, and generally to act in Our name and on Our behalf, *subject to such Orders and Regulations*[1] as he shall, from time to time, receive from Us through one of Our Principal Secretaries of State.'

The Governor-General may not be the 'agent' of the Secretary of State, but he is undoubtedly his subordinate[2] politically.

He must take certain oaths.

Every Governor-General must take an oath of allegiance, and an oath for the due execution of his office and for the due and impartial administration of justice, in the forms given hereinafter, and must, either himself or by any other person authorized by him, administer to every person who may be appointed a Governor, Lieutenant-Governor, Chief Commissioner, member of an Executive Council, or a Minister in India, similar 'oaths of allegiance and of office'.[3]

[1] The Italics are ours.

[2] Whilst performing his function as the representative of the Home Government, the Viceroy 'is really subordinate to the Secretary of State. Lord Salisbury made this perfectly plain to Lord Northbrook in 1875. The amount of this subordination, however, depends on the personality of the Viceroy and the Secretary. Lord Salisbury made this subordination apparent with his fist, Lord Morley with his persuasiveness'.—Mr. J. Ramsay MacDonald, *The Government of India*, p. 57. See also Sapru, *The Indian Constitution*, pp. 59–66.

[3] See *The Gazette of India*, June 11, 1921, pp. 850–51 ; Notification No. 1552, June 8, 1921.

FORM OF OATH OF ALLEGIANCE

I, . . . , do swear that I will be faithful and bear true allegiance to His Majesty, King. . . . . , Emperor of India, His Heirs and Successors, according to law.

So help me God.

FORM OF OATH OF OFFICE

I, . . . , do swear that I will well and truly serve our Sovereign, King. . . . . . , Emperor of India, in the office of . . . and that I will do right to all manner of people after the laws and usages of India, without fear or favour, affection or ill-will.

So help me God.

He is required by the Royal Instructions[1] to be vigilant that the policy of Parliament as set forth in the Preamble to the Government of India Act, 1919, 'is constantly furthered alike by his Government and by the local Governments of . . . presidencies and provinces'. He is also required by the same Instructions to do everything that lies in him, consistently with the fulfilment of his responsibilities to the Crown and Parliament for the welfare of the Indian people, that the administration of the central subjects may be carried on in harmony with the wishes of the people as expressed by their representatives in the Indian Legislature, 'so far as the same will appear to him to be just and reasonable.'

The Governor-General in Council.

We have stated above the specific powers and duties of the Governor-General. We now propose to describe the constitution and functions of his Executive Council and to discuss the powers vested in the Governor-General in Council[2] as, we must bear in mind, the Government of India is

[1] See Appendix N.
[2] 'The Governor-General in Council is often described as the

conducted 'not by an individual but by a Committee. No important act can be taken without the assent of a majority of that Committee.'[1]

Evolution of the Executive Council of the Governor-General.

The constitution of the Executive Council of the Governor-General has been altered from time to time. The Council, as originally constituted by the Regulating Act of 1773, consisted of four members named in the Act.[2] The number of councillors was reduced by Pitt's Act of 1784 to three, of whom the Commander-in-Chief of the Company's forces in India for the time being was to be one and to have precedence in Council next to the Governor-General.[3] The Charter Act of 1793 fixed the number of members at

Government of India, a description which is recognized by Indian legislation '.—Ilbert, *The Government of India*, p 202.

According to Sir C. Ilbert, 'the Governor-General in Council, as representing the Crown in India, enjoys, in addition to any statutory powers, such of the powers, prerogatives, privileges, and immunities appertaining to the Crown as are appropriate to the case and consistent with the system of law in force in India. . . . The Governor-General in Council has also, by delegation, powers of making treaties and arrangements with Asiatic States, of exercising jurisdiction and other powers in foreign territory, and of acquiring and ceding territory '.—*The Government of India*, p. 203.

See also in this connection *Comparative Administrative Law* by Mr. N. N. Ghosh, pp. 252–53.

[1] Lord Curzon's speech at a dinner given by the United Service Club, Simla, on September 30, 1905.—*Lord Curzon in India*, vol. ii, p. 299.

Lord Curzon also said in the course of his speech :—

'The Viceroy is constantly spoken of as though he and he alone were the Government. This is of course unjust to his colleagues, who are equally responsible with himself, and very often deserve the credit which he unfairly obtains. On the other hand, it is sometimes unfair to him ; for he may have to bear the entire responsibility for administrative acts or policies which were participated in and perhaps originated by them. . . . The Viceroy has no more weight in his Council than any individual member of it.'

The last sentence in the above quotation is, as Mr. Ramsay MacDonald puts it, 'a fanciful exaggeration of the Viceroy's weakness.'

[2] The East India Company Act, 1773, Section 10.—P. Mukerji's *Constitutional Documents*, vol. i.

[3] The East India Company Act, 1784, Section 18, *Ibid.*

three and provided further that, if the offices of Governor-General and Commander-in-Chief were not united in the same person, which might be allowed under an Act of 1786, the Commander-in-Chief might be a member of the Council of Fort William, if specially appointed so by the Court of Directors, and that, if so appointed, he should have rank and precedence next to the Governor-General.[1] The Charter Act of 1833 authorized the appointment of four ordinary members and one extraordinary member of Council.[2] The Commander-in-Chief was to be the extraordinary member of Council, if so appointed. Of the ordinary members, three were to be recruited from the Company's service, but the fourth member was to be appointed from outside the service. The duty of the fourth ordinary member had been confined entirely to legislation till 1853 when he was made, under the Charter Act of that year, a 'full executive member' and thus placed on the same footing with the other ordinary members of the Council. The number of the ordinary members of the Council was increased to five by the Indian Councils Act of 1861 which also continued the provision of the Act of 1833 relating to the appointment of the Commander-in-Chief as an extraordinary member.[3] It further enacted that whenever the Council would meet in Madras or Bombay, the local Governor would be another extraordinary member of the Council.[4] The Indian Councils Act of 1874 [5] authorized the appointment of a sixth ordinary member to the Council for public works purposes, but the power given by this Act was not always exercised. An amending Act[6] passed in

[1] The Charter Act of 1793, Section 32.—P. Mukerji's *Constitutional Documents*, vol. i.
[2] The Charter Act of 1833, Section 40. *Ibid*
[3] The Indian Councils Act, 1861, Section 3.—P. Mukherji's *Constitutional Documents*, vol. i.
[4] The Indian Councils Act, 1861, Section 9. *Ibid.*
[5] Section 1. [6] P. Mukherji's *Constitutional Documents*, vol. i.

1904 removed the restriction that the appointment of the sixth ordinary member should be only for public works purposes. The Government of India Act, 1915,[1] fixed the maximum number of the ordinary members at six and provided for the appointment of the Commander-in-Chief as an extraordinary member. It re-enacted the provision, referred to before, that whenever the Council would assemble in any province having a Governor, the latter would be another extraordinary member of the Council. Thus the Council before the Reforms consisted ordinarily of six ordinary members and the Commander-in-Chief as an extraordinary member thereof.

Its present constitution.

Under the existing Act[2] the Council is to consist of such number of members as the Crown may think fit to appoint. Thus the statutory limitation on the number of its members, which existed previously, has now been removed. This has been done obviously in pursuance of the recommendations both of the authors of the Joint Report and of the Joint Select Committee. The changed relations of the Government of India 'with provincial governments,' write the authors of the Joint Report,[3] 'will in themselves materially affect the volume of work coming before the departments, and for this reason alone some redistribution will be necessary. We would therefore abolish such statutory restrictions as now exist in respect of the appointment of members of the Governor-General's Council so as to give greater elasticity both in respect of the size of the Government and the distribution of work.' The Joint Select Committee also recommended[4] that the limitation on the number of the members of the Executive Council should be removed; that three

[1] Sections 36 and 37.
[2] Section 36 (2) of the Act.
[3] Para. 271.
[4] The Joint Select Committee's Report on Clause 28 of the Government of India Bill.

members of that Council should continue to be public servants or ex-public servants having not less than ten years' experience in the service of the Crown in India; and that one member of the Council should have definite legal qualifications which might be gained in India as well as in the United Kingdom. Accordingly it has been provided in the Act[1] that three at least of the members of the Council must be persons who have been in the service of the Crown in India for not less than ten years, and one must be a barrister of England or Ireland, or a member of the Faculty of Advocates of Scotland, or a pleader of a High Court in India of not less than ten years' standing. If any member of the Council other than the Commander-in-Chief is at the time of his appointment in the military service of the Crown, he must not, so long as he continues to be a member, hold any military command or be employed in actual military duties. If the Commander-in-Chief is a member of the Council, he must have, subject to the provisions of the Act, rank and precedence in the Council next to the Governor-General.[2] The Council, as at present constituted, consists of seven members including the Commander-in-Chief who is no longer to be regarded as an extraordinary member, since the classification of members as ordinary and extraordinary, which formerly existed, has been abolished by the present Act.[3] There are now three Indian members on the Council. The increase in the number of Indian members to three has been made in pursuance of the recommendation of the Joint Select Committee that 'not less than three members of the

[1] Section 36 (3).

[2] Section 37 of the Act. The Commander-in-Chief is appointed by the crown by Warrant under the Royal Sign Manual.—Section 19 (1) of the Act. This provision was made by the Government of India (Leave of Absence) Act, p. 1924.

[3] Section 37 of the Act.

Council should be Indians.'[1] It may be noted here that there is nothing in the Act to prevent all the members of the Council from being Indians, provided, of course, they satisfy the statutory requirements stated above. The Act distinctly lays down that no native of British India, nor any subject of His Majesty resident therein, shall, by reason only of his religion, place of birth, descent, colour, or any of them, be disabled from holding any office under the Crown in India.[2] It will only require a bold effort of statesmanship to Indianize the Council completely. We may note, however, in this connection, as the Joint Select Committee has remarked, that 'the members of the Council drawn from the ranks of the public servants will, as time goes on, be more and more likely to be of Indian rather than of European extraction.'[3] It need not perhaps be stated here that these questions will not at all arise when India will attain full Dominion status.

The members[4] of the Council are appointed by the Crown[5] on the advice[6] of the Secretary of State and usually hold office for a term of five years.[7] Every member of the Council other than the Commander-in-Chief is paid a salary of Rs. 80,000 per annum. This is also the maximum

[1] The Joint Select Committee's Report on Clause 28 of the Government of India Bill. [2] Section 96 of the Act.

[3] See the Report of the Joint Select Committee on Clause 28 of the Government of India Bill.

[4] Under a Notification of the Viceroy, the members are styled 'The Honourable'.—See Eggar, *The Government of India*, p. 23 *n*.

[5] But see also the next page.

[6] See Curzon, *British Government in India*, vol. ii, p. 110.

[7] A temporary vacancy in the office of a member of the central Executive Council other than the Commander-in-Chief, or of a member of the Executive Council of a Governor, may be filled by the Governor-General in Council, or a Governor in Council, as the case may be.—Section 92 (1) of the Act. But the Secretary of State may prohibit the filling of a temporary vacancy in the central Executive Council. And if a temporary appointment has already been made, it must be cancelled as soon as the Governor-General is informed of the desire of the Secretary of State.

amount payable to him under the Act. The salary of the Commander-in-Chief is Rs. 100,000 a year.[1] It is, perhaps, not necessary to mention that these salaries are paid out of the revenues of India.

Leave of Absence to the Governor-General, etc.

Under Section 86 of the Act,[2] the Secretary of State in Council may grant to the Governor-General and, on the recommendation of the Governor-General in Council, to the Commander-in-Chief, leave of absence for urgent reasons of public interest, or of health or of private affairs. And the Governor-General in Council also may grant to any member of his Executive Council other than the Commander-in-Chief leave of absence for urgent reasons of health or of private affairs.

Such leave of absence cannot be granted to any person for any period exceeding four months, nor more than once during his tenure of office.[3] The Secretary of State in Council may however extend any period of leave granted under the above provision, but in any such case the reasons for the extension must be set forth in a minute signed by the Secretary of State and laid before both Houses of Parliament.[4] If leave is granted, in pursuance of the foregoing provision, to the Governor-General or to the Commander-in-Chief, a person must be appointed to act in his place during his absence, and the appointment must be made by His Majesty by Warrant under the Royal Sign Manual.[5] The person so appointed during the absence of the Commander-in-Chief may, if the latter was a Member of the Executive Council of the Governor-General, be also appointed[6] by the Governor-General in Council to be a temporary member of

[1] This is also the maximum payable under the Act.
[2] See Appendix O.
[3] For other conditions, leave allowances, etc., see Appendix O.
[4] Section 86 of the Act. [5] Section 87 of the Act.
[6] The Commander-in-Chief is not an *ex-officio* member of the central Executive Council.

the Council.[1] Any person so appointed temporarily must, till the return to duty of the permanent holder of the office, or if he does not return, till a successor arrives, hold and execute the office to which he has been appointed, and must have and may exercise all the rights and powers thereof.[2] Besides, he will be entitled to receive the emoluments and advantages appertaining to the office, foregoing the emoluments and advantages (if any) to which he was entitled at the time of his appointment.[3]

Procedure followed at meetings of the Governor-General's Council.

A member of the Council is appointed to be its Vice-President by the Governor-General. The Council meets in such places in India as the Governor-General in Council appoints. At any meeting of the Council the Governor-General or any other person presiding and one member of the Council other than the Commander-in Chief may exercise all the functions of the Governor-General in Council. In case of difference of opinion on any question brought before a meeting of the Council, the Governor-General in Council is ordinarily bound by the decision of the majority of those present, and, if they are equally divided, the Governor-General or any other person presiding has a second or casting vote.[4] But if, as has been seen before, any measure is proposed before the Governor-General in Council, whereby the safety, tranquillity or interests of British India, or of any part thereof, are or may be, in the judgment of the Governor-General, essentially affected, he (i.e. the Governor-General) may overrule the majority if they dissent from his view, and act on his own authority and responsibility.[5] In every such case any two dissentient members may require that the matter in dispute and the fact of their dissent be reported to the Secretary of State ; and in that case the report

[1] Section 87 of the Act. [2] *Ibid.* [3] *Ibid.*
[4] Section 41 of the Act. [5] *Ibid.*

must be sent together with copies of any minutes which may have been recorded on the subject by the members of the Council.[1] It may be noted here that the Governor-General cannot, under his overruling power, do anything which he could not lawfully have done with the concurrence of his Executive Council.[2] If the Governor-General is absent from any meeting of the Council owing to indisposition or any other cause, the Vice-President, or, if he too is absent, the senior member other than the Commander-in-Chief present at the meeting presides thereat.[3] The person presiding has the same powers as the Governor-General would have had if present. But if the Governor-General happens to be at the time at the place where the meeting is held, 'any act of Council made at the meeting' requires his signature, if he is in a position to sign it. If, however, he refuses to sign the act, it becomes null and void. During the absence of the Governor-General on tour, a member in charge of a Department may call together an informal meeting of his colleagues to discuss an important or emergent case, the result being reported to the Governor-General.[4] All orders of the Governor-General in Council must be issued in the name of the Governor-General in Council, and must be signed by a Secretary to the Government of India, or otherwise, as the Governor-General in Council may direct.[5] An order so signed cannot be called into question in any legal proceeding.[6] The Governor-General has been empowered by the Act to make rules and orders for the more convenient transaction of business in his Council.[7] Any order made, or act done, in accordance therewith must be regarded as the order or the act of the Governor-General in Council.[8]

[1] Section 41 of the Act. [2] *Ibid.* [3] Section 42 of the Act.
[4] Resolution on the Report of the Government of India Secretariat Procedure Committee.—*Vide The Gazette of India*, September 18, 1920.
[5] Section 40 of the Act. [6] *Ibid.* [7] *Ibid.* [8] *Ibid.*

Under the present system, which was first introduced by Lord Canning and which we shall have occasion to describe in detail later, the business of the Governor-General in Council is distributed among various Departments, somewhat on the lines of the British Cabinet. Each member of the Council is in charge of one or two Departments of the administration, the Viceroy keeping usually the Foreign and Political Department in his own hands. The work of the Council has been variously distributed from time to time. The existing division of business among the different Departments was made by the Governor-General by an order, dated April 11, 1923.[1] There are at present nine Departments—(i) Foreign and Political, (ii) Railways and Commerce, (iii) Industries and Labour, (iv) Education, Health and Lands, (v) Army, (vi) Home, (vii) Legislative, (viii) Finance, and (ix) Ecclesiastical. The member in charge of the Department of Railways and Commerce holds charge also of the Ecclesiastical Department, and the Governor-General himself, as stated above, administers the Foreign and Political Department.[2]

The present executive Departments of the Government of India.

The Foreign and Political Department deals with questions relating to external politics, frontier tribes, and States in India.[3] It also exercises control over the general administration of Ajmer-Merwara, the North-West Frontier Province and British Baluchistan. This Department, according to Sir George Chesney,[4] is 'the most important and perhaps the most laborious of all.' Describing the varied nature of the work usually done by an officer of this Department,

The Foreign and Political Department.

[1] *Vide The Englishman* (Dak edition), April 13, 1923.
[2] 'There he is in the exact position of an ordinary Member of Council.'—Curzon, *British Government in India*, vol. ii, p. 112.
[3] *Vide The Imperial Gazetteer of India*, vol. iv, p. 21.
[4] *Indian Polity*, p. 124.

Lord Curzon said in one of his parting speeches[1]: 'The public at large hardly realizes what the Political (i.e., an officer of the Political Department) may be called upon to do. At one moment he may be grinding in the Foreign Office, at another he may be required to stiffen the administration of a backward Native State, at a third he may be presiding over a *jirga* of unruly tribesmen on the frontier, at a fourth he may be demarcating a boundary amid the wilds of Tibet or the sands of Seistan. There is no more varied or responsible service in the world than the Political Department of the Government of India.' In course of another speech[2] he stated: 'The work of the Foreign Department is unusually responsible . . . . . it embraces three spheres of action so entirely different and requiring such an opposite equipment of principles and knowledge as to (?) the conduct of relations with the whole of the Native States of India, the management of the Frontier provinces and handling of the Frontier tribes, and the offering of advice to His Majesty's Government on practically the entire foreign policy of Asia, 'which mainly or wholly concerns Great Britain and its relation to India.' The Foreign Department also 'deals with questions of ceremonial, and with matters relating to the Indian Orders.' In respect of this Department the Viceroy is, in the words of Lord Curzon, in the exact position of an ordinary Member of Council. He is assisted in his work by two Secretaries, one Foreign and the other Political, three Deputy Secretaries, one Under-Secretary, three Assistant Secretaries and a number of other officers.

The Army Department transacts[3] all business 'connected

[1] *Lord Curzon in India*, vol. ii, p. 304.
[2] *Ibid.*, p. 317; also Curzon, *British Government in India*, vol. ii, p. 113.
[3] See pp. 51 and 52 of *The Army in India and its Evolution*, 1924, published by the Superintendent, Government Printing, India.

with the administration of the Army, the formulation and execution of the military policy of the Government of India, the responsibility for maintaining every branch of the Army, combatant and non-combatant, in a state of efficiency, and the supreme direction of any military operations based upon India.' It is also concerned with the administration of the Royal Indian Marine and the Royal Air Force in India, 'in so far as questions requiring the orders of the Government of India are concerned.'[1] The Commander-in-Chief has twofold functions in India: he is both the chief executive officer of the Army and, by custom, the Army Member of the Viceroy's Executive Council.[2] He is thus the sole military adviser of the Government of India. Besides, he administers the Royal Indian Marine and the Royal Air Force in India.[3] He is assisted by a Secretary, who is now a civilian, a Deputy Secretary, an establishment officer and three Assistant Secretaries. The Secretary, like other Secretaries in the civil Departments, is a Secretary to the Government of India and has the constitutional right of access to the Governor-General.[4] He represents the Army Department in that Chamber of the Indian Legislature of which the Commander-in-Chief does not happen to be a member.

The Army Department.

The Governor-General in Council exercises the same authority over the administration of the Army as he does in respect of the administration of other Departments of the Government.[5] As it is a recognized liability of the Government of England to come, in a grave emergency, to India's assistance with the armed forces of the Crown in England, the British Government and its representative, the Secretary of State for India, claim to have 'special responsibility and

[1] See pp. 51–52 of *The Army in India and its Evolution*, 1924, published by the Superintendent, Government Printing, India.
[2] See *ibid.*, pp. 50–51. [3] *Ibid.*, p. 52. [4] *Ibid.*, p. 54.
[5] *Ibid.*, p. 50.

authority in regard to the military administration in India.'[1] The Secretary in the Military Department of the India Office is the chief adviser of the Secretary of State on Indian military questions.[2] He is usually an officer of the rank of Lieutenant-General recruited from the Indian Army.[3] He is assisted by one first-grade staff officer selected also from the Indian Army.[4] He is expected to visit India during the tenure of his office that he may keep in touch with the current of Indian affairs. Besides, a retired Indian Army officer of high rank is usually appointed to the Council of India.[5]

It is extremely desirable that the Commander-in-Chief should not be a member of the Executive Council of the Governor-General; nor should he be a member of either Chamber of the Indian Legislature. As in England, a civilian member should be in charge of the Army Department. As Sir Tej Bahadur Sapru says,[6] 'constitutionally, it is not right that even in a semi-developed Constitution like India's, the administrative head of the Army should participate in civil administration'. Apart from this consideration, free from the worries associated with the membership of the Executive Council and of the Legislature, the Commander-in-Chief would be able to devote more time and attention to questions relating to the defence of India, and 'to maintain continuous personal contact with the whole army.'[7] It is further desirable, both in the interests of the dignity of his office and the efficiency of the Army, that his name should not be dragged into the quagmire of party politics. But it would be difficult to prevent this so long as he would continue to be a member of the Executive Council and also of the Legislature. Lastly, the day is not

[1] *The Army in India and its Evolution*, p. 50.
[2] *Ibid.* [3] *Ibid.* [4] *Ibid.* [5] *Ibid.*
[6] *The Indian Constitution*, p. 43; see also Sivaswamy Aiyer, *Indian Constitutional Problems*, pp. 176–80.
[7] See Sivaswamy Aiyer, *Indian Constitutional Problems*, p. 177.

far distant when the expenditure for defence will be a votable item, and it will then be 'much easier for a civilian member to secure the necessary grants for military expenditure from the Legislature than for a military expert'.[1]

The Home Department.

The Home Department[2] deals with all business connected with the general internal administration of British India. Internal politics, Indian Civil Service, law and justice, jails, police and a number of other subjects including the administration of the Arms Acts and of the penal settlement of Port Blair in the Andaman Islands are within the jurisdiction of this Department. As most of the subjects dealt with by this Department are under the administration of local Governments, the work of the Home Department is, to a large extent, the work of supervision, direction and control.

The Legislative Department.

The member in charge of the Legislative Department is known as the Law Member. If a Bill introduced into either Chamber of the Indian Legislature is referred to a Select Committee of the Chamber, the Law Member, if he is a member of the Chamber, must be Chairman of the Committee. Even if he does not happen to be a member of the Chamber, he has the right of attending at, and taking part in the deliberations of, the meetings of the Select Committee.[3] The chief functions of this Department are to prepare the drafts of all official Bills introduced into either Chamber of the Indian Legislature, to assist the other Departments of the Government with legal advice when necessary, and to examine the projects of legislation of local Governments when they are referred to the Government of India, or the Acts passed by local Legislatures. The Department is also consulted

[1] Sivaswamy Aiyer, *Indian Constitutional Problems*, p. 179.
[2] Vide *The Imperial Gazetteer of India*, vol. iv, p. 23.
[3] The Legislative Assembly Standing Order 40 and the Council of State Standing Order 39.

before any statutory rules having the force of law are issued.

The Department of Railways and Commerce.

The Department of Railways and Commerce deals[1] with all work connected with railways, shipping, trade and commerce including tariffs, import and export regulations, statistics, life assurance and actuarial work.

The Department of Industries and Labour.

The Department of Industries and Labour[2] is concerned with labour legislation, inter-provincial migration, Factories Act, International Labour Organization, Petroleum and Explosives Act, patents, designs and copyrights, steam-boiler and electricity legislation, stores, geology and minerals, printing and stationery, civil aviation, meteorology, development of industries (central aspects), Posts and Telegraphs, Public Works and Irrigation.

The Department of Education, Health and Lands.

The Department of Education, Health and Lands[3] deals with education, land revenue, civil veterinary, agriculture, forests, central research on above subjects, botanical survey, famine, control of food-stuffs, external emigration, Survey of India, Medical Services and Public Health, Zoology, local self-government, libraries and records, archæology and museums.

The Finance Department.

The Finance Member of the Government of India is in charge of the Finance Department. This Department is mainly concerned with the general administration of central finance; with some supervision of provincial finance; with questions relating to the salaries, leave and pensions of public officers; and with auditing and accounts, currency, banking, exchange, Mints and the public debt of India. A separate branch of this Department, known as the Military Finance Department, deals with all matters relating to the financial

[1] The Governor-General's Order, dated Simla, April 11, 1923.
[2] *Ibid.* [3] *Ibid.*

administration of the Army.[1] Subjects like customs, salt, opium, excise and stamps are administered by a Board of Revenue working as a part of this Department. It is the duty of the Finance Member to keep expenditure within legitimate limits. He has to examine, from the financial point of view, any scheme or proposal brought before the Governor-General in Council, which is likely to involve the expenditure of public money. He is, so to speak, the guardian of public revenue. He is the Chairman of the Committee on Public Accounts, to which we have referred before. His annual financial statement, known as the Budget, is looked forwad to with great eagerness, not unmixed with anxiety, throughout the country.[2]

How the Council works : the original system.

We shall now describe the manner in which the business of the Council is transacted. During the administration of the East India Company, every case, however unimportant, was supposed to be placed before all the members of the Government, and

[1] *Vide The Imperial Gazetteer of India*, vol. iv, p. 25.

[2] Describing the work of this Department, Sir Malcolm Hailey (sometime Finance Member) said in the course of one of his speeches in the Legislative Assembly as follows :—

'We have to explain what we have done with the money voted by the House during the past year. We have to explain whether our anticipations of revenue have been fulfilled or not. We have to explain to it (i.e., Assembly) why and how in any particular case we have exceeded the grants made to us. We have to lay before the House a very complete scheme of operations, not only of revenue and expenditure, but of ways and means finance for the coming year. We have to justify this to the House, and we have to obtain practically every penny of it in the form of a direct demand for a grant. . . . The second branch of my Department is concerned with such matters as financial rules, financial regulations and relations with the Provincial Governments. . . . Then comes a very important branch, I mean that relating to what we call pure finance, that is, all those questions relating to the provision of ways and means, the adjustment of remittance transactions, the paper currency issue, the raising of loans, and the provision of everyday finance by means of Treasury Bills, advances from the Bank and the like.'—*Vide Legislative Assembly Debates*, pp. 1768-69 ; January 19, 1922. Also see Gyan Chand, *Financial System in India*, pp. 18–22.

to be decided by them collectively. As Sir William Hunter vividly describes,[1] 'under the Company every case actually passed through the hands of each Member of Council, circulating at a snail's pace in little mahogany boxes from one Councillor's house to another.' 'The system involved,' said a former Member of Council, 'an amount of elaborate minute writing which seems now hardly conceivable. The Governor-General and the Council used to perform work which would now be disposed of by an Under-Secretary.'[2] The work of the Council enormously increased in all directions as a consequence of the policy pursued by Lord Dalhousie's Government, and the necessity of changing the old cumbrous method of doing business collectively was keenly felt. Lord Canning abolished the old method and introduced[3] the beginning of the present 'Departmental' system, under which each member of the Council is placed in charge of one or more branches of the administration, only important matters being referred to the Viceroy, or to the whole Council. The arrangement made by Lord Canning was at first informal and was a matter of private understanding within the Council. It was legalized under the Indian Councils Act, 1861, which empowered[4] the Governor-General, as we have seen before, to make rules and orders for the more convenient transaction of business in his Council, and provided that any order made or act done in accordance therewith should be regarded as the order or act of the Governor-General in Council.

Introduction of the 'Departmental' system.

The system, as subsequently developed, has been thus described by Sir John Strachey[5]:— 'Although the

[1] *The Earl of Mayo* (Rulers of India Series), p. 81. Read in this connection chapter iii of that book.

[2] *Ibid.* [3] See *Indian Polity* by Sir George Chesney, p. 123.

[4] See Section 8 of the Indian Councils Act, 1861—P. Mukherji' *Documents*, vol. i.

[5] *India, Its Administration and Progress* (1903 ed.), pp. 60-61.

separation of departments in India is less complete than in England, and the authority of a member of Council much less extensive and exclusive than that of an English Secretary of State, the members of Council are now virtually Cabinet ministers, each of whom has charge of one of the great departments of the Government. Their ordinary duties are rather those of administrators than of councillors. The Governor-General regulates the manner in which the public business shall be distributed among them. He usually keeps the Foreign department in his own hands. . . . While the member of Council takes the place of the English Secretary of State, there is in each department a Secretary holding a position analogous to that of a permanent Under-Secretary in England. It is the duty of this Secretary to place every case before the Governor-General or member in charge of his department, in a form in which it is ready for decision. He submits with it a statement of his own opinion. In minor cases the member of Council passes orders which are final. If the matter be one of greater importance, he sends on the papers, with his own orders, to the Governor-General for his approval. If the Governor-General concurs, and thinks further discussion unnecessary, the orders are issued. If he does not concur, he directs that the case shall be brought before the Council, as in England an important case might come before the Cabinet. The duty rests upon the Secretary, apart from his responsibility towards the member of Council in charge of the department, of bringing personally to the knowledge of the Governor-General every matter of special importance. All orders of the Government are issued in the name of the Governor-General in Council.'[1]

[1] See in this connection also *The Earl of Mayo* by Sir William Hunter, pp. 83–4.

The practice now in vogue[1] is substantially the same as described above. The Council meets usually once a week, but special meetings may be held at any time, if necessary. The meetings are not open to the public. The members of the Council cannot act otherwise than in Council, or 'by the implied authority of the Governor-General in Council.' Under the rules of business laid down by the Governor-General, minor matters relating to a Department are disposed of by the Member in charge of the Department, without being brought before the Viceroy or the Council. All important questions, and specially those in which two Departments fail to come to an agreement or a local Government has to be overruled, are referred to the Viceroy. He may himself pass orders in respect of such cases or may refer them to the whole Council. 'The Statutory rules framed under the Government of India Act require,' says an official communique,[2] 'that every case, which, in the opinion of the Member in charge of the Department to which the subject belongs, is of major importance, shall be submitted by him to the Governor-General with the orders proposed by him.' And lest there should be any case of omission to refer an important matter to the Viceroy, there is an additional safeguard provided 'through the position occupied by the Secretaries to the Government of India who, while they are charged with the duty of seeing that the rules of business are duly observed, are at the same time given a status independent of the members with the right of referring at their discretion any case at any stage for the Governor-General's orders.'[3] Sir Thomas Holland, who was once the Member in charge of

The present system.

[1] *Vide* the *Fifth Decennial Report*, p. 53.

[2] The communique was issued on August 28, 1921, by the Government of India in the Industries Department on what is known as the 'Munitions Fraud Case.'

[3] See the communique on 'The Munitions Fraud Case,' dated August 28, 1921.

the Department of Industries, was practically censured by the Governor-General in Council and had to resign his membership of the Viceroy's Executive Council for his failure to submit a matter of public importance to the Governor-General before he issued orders thereon in the name of the Government of India. The facts[1] of the case were as follows:—

The Munitions Fraud Case and the resignation of Sir Thomas Holland: their constitutional significance.

Four persons, namely, C. S. Waite, Rai Bahadur Sukhlal Karnani, J. C. Banerji and H. Stringer, were charged with conspiring to cheat in regard to the supply of a quantity of wire rope to the Munitions Board in August, 1918. While the trial was proceeding, Sir Thomas Holland decided to withdraw the prosecution, and issued orders accordingly, on the ground that, if the prosecution of Karnaṇi and Banerji were proceeded with, widespread commercial and industrial interests would be seriously affected by reason of the association of these persons with various business concerns, mainly of a *Swadeshi* character, and that the Government considered that it was preferable that these men, though guilty, should escape punishment rather than that a large number of innocent persons should suffer loss. Intense agitation, both in India and England, followed the withdrawal of the prosecution. Thereupon, the Government of India in the Industries Department issued a lengthy statement reviewing the whole case. It made it clear therein that it was impossible to justify the withdrawal in this case on the specific grounds given, and emphasized that withdrawal of a prosecution on the ground that a section of the financial or commerical community would suffer from a conviction was inconsistent with the principles on which justice should be administered, and called for the most emphatic repudiation from the Government. The Govern-

[1] See the communique on 'The Munitions Fraud Case,' dated August 28, 1921; also *India in 1921-22*, pp. 77-8.

ment also took the strongest exception to the suggestion that it might be preferable that men though guilty should escape punishment rather than that a large number of innocent persons should suffer loss. Continuing, the Governor-General in Council stated that Sir Thomas Holland had committed an error of judgment in failing to submit the matter to the Governor-General. Sir Thomas Holland himself expressed his deep regret for his omission to invite the attention of the Governor-General to the case during the period of its reconsideration or to take his instructions before issuing orders in modification of the previous decision favouring prosecution. No responsibility attached in this case to the Secretary in the Industries Department, since the matter had been placed outside his jurisdiction by a special resolution of the Government of India passed in February, 1921.

Questions raising important administrative issues or laying down general policies are invariably settled in the whole Council. In case of difference of opinion on any question, the vote of the majority prevails, subject, however, to the power of the Governor-General to override the majority in special cases. In case of an equality of votes on both sides, the Governor-General or any other person presiding has a casting vote.

The Royal Commission upon Decentralization on the transaction of the business of the Governor-General in Council.

We close this topic with an extract from the Report of the Royal Commission upon Decentralization in India. The reader will find in this extract a most detailed and interesting, and at the same time a most authoritative, description of the manner in which the business of the Governor-General in Council is transacted and also of the method of work in the Secretariat of the Government of India. [1]

[1] *Report of the Royal Commission upon Decentralization in India* (1909), vol. i, paras. 19–22.

'In regard to his own Department, each Member of Council is largely in the position of a Minister of State, and has the final voice in ordinary departmental matters. But any question of special importance, and any matter in which it is proposed to overrule the views of a local Government, must ordinarily be referred to the Viceroy. This latter provision acts as a safeguard against undue interference with the local Governments, but it necessarily throws a large amount of work on the Viceroy. In the year 1907–8, no less than 21·7 per cent. of the cases which arose in, or came up to, the Home Department, required submission to the Viceroy, The Home Department is, however, concerned with questions which are, in a special degree, subject to review by the Head of the Government, and we believe that in other Departments the percentage of cases referred to the Viceroy is considerably less. Any matter originating in one Department which also affects another must be referred to the latter, and in the event of the Departments not being able to agree, the case would have to be referred to the Viceroy.

'The Members of Council meet periodically as a Cabinet —ordinarily once a week—to discuss questions which the Viceroy desires to put before them, or which a Member, who has been overruled by the Viceroy, has asked to be referred to Council. The Secretary in the Department primarily concerned with a Council case attends the Council meeting for the purpose of furnishing any information which may be required of him. If there is a difference of opinion in the Council, the decision of the majority ordinarily prevails, but the Viceroy can overrule a majority if he considers that the matter is of such grave importance as to justify such a step.

'Each Departmental office is in the subordinate charge of a Secretary,[1] whose position corresponds very much to

[1] There are now two Secretaries—one Foreign and the other

that of a permanent Under-Secretary of State in the United Kingdom, but with these differences, that the Secretary, as above stated, is present at Council meetings; that he attends on the Viceroy, usually once a week, and discusses with him all matters of importance arising in his Department; that he has the right of bringing to the Viceroy's special notice any case in which he considers that His Excellency's concurrence should be obtained to action proposed by the Departmental Member of Council; and that his tenure of office is usually limited to three years. . . . The Secretaries have under them Deputy, Under and Assistant Secretaries, together with the ordinary clerical establishments. . . .

'A case coming up to a Government of India Secretariat is first of all noted on by the clerical branch of the office. It then goes, usually, to an Assistant or Under-Secretary, who, if he accepts the office note, signs his name below it. If he disagrees or desires to add anything, he notes accordingly. His work, in turn, goes to a Deputy Secretary or to the Secretary, who acts in the same way. A Deputy Secretary often submits cases direct to the Member in charge, but the papers come back through the Secretary, to enable the latter to see what is going on. Secretaries and their principal subordinates may dispose of petty cases of a routine character on their own responsibility, but lists of such cases go weekly to the Secretary and Member, so that any independent action by a subordinate which is deemed inadvisable may be checked. Otherwise, cases go on to the Member in charge, and if reference to the Viceroy or to some other Department is not required, his order is final. This elaborate system of noting . . . is held to be justified by the constant changes in the superior personnel of the Secretariats and Departments in India.

Political—in the Foreign and Political Department. *The Indian Year Book*, 1923, edited by Sir Stanley Reed, p. 26.

'In important cases the notes are printed, for future reference, along with the papers to which they relate, but these are only for confidential use in the Secretariats themselves. The Government of India, however, submit monthly volumes of their printed proceedings (without the notes) to the Secretary of State. . . .'

Nature of the Council: its irresponsible character.

We may notice here one more point in connection with the constitution and character of the Executive Council. The Council is not constituted, as we have seen before, on the principles on which the British Cabinet or the Canadian Ministry is formed.[1] Its members are not yet responsible to the Indian Legislature. A vote of censure on the Council by the Legislative Assembly, not to speak of the Council of State, cannot drive it out of power. Thus, so far as its relations to the people of the country are concerned, it is as irresponsible now as it was before the introduction of the Montagu-Chelmsford changes. The Government of India is responsible only to the Imperial Parliament. Subject to the ultimate control of that body alone, it has indisputable power in respect of all matters which it considers to be essential to the discharge of its responsibilities for the peace, order and good government of India. But there is one feature which the Council has in common with the British Cabinet, namely, 'the principle of united and indivisible responsibility.'[2] It

[1] It may also be noted here that in England the Prime Minister practically appoints every member of his own Government; but in India the Viceroy, to quote the words of Lord Curzon, 'does not appoint a single one of his immediate colleagues.' Indeed, on the solitary occasion on which he pressed for one such appointment, he was informed by the Secretary of State that the duty of advising the King on the choice of a Member of Council rested solely with the Secretary of State, and that no greater violation of the Constitution could be imagined than that this duty should degenerate into a mere formal submission to His Majesty of the views and recommendations of the Viceroy!—Curzon, *British Government in India*, vol. ii, p. 110.

[2] See para. 34 of *The Montagu-Chelmsford Report*.

has been distinctly laid down by a former Secretary of State[1] that 'it should be understood that this principle (i.e. the principle of united and indivisible responsibility), which guides the Imperial Cabinet, applies equally to administrative and to legislative action; if in either case a difference has arisen, Members of the Government of India are bound, after recording their opinions, if they think fit to do so, for the information of the Secretary of State in the manner prescribed by the Act, either to act with the Government or to place their resignations in the hands of the Viceroy. It is moreover immaterial for the present purpose what may be the nature of the considerations which have determined the Government of India to introduce a particular measure. In any case, the policy adopted is the policy of the Government as a whole, and as such, must be accepted and promoted by all who decide to remain members of that Government.' From this it is evident that even if, in respect of a particular matter, the decision of the Government of India is in reality the decision of a single person, namely, the Viceroy, rather than that of the whole Council, that decision must be supported and acted upon by the members of the Council, or they must resign. As we have already stated, the proceedings of the Council are secret; and, therefore, 'it is not consonant with the practice of the Government of India or with the constitutional position on which that practice is based either to disclose the identity or to publish the individual views of the members of Government who have taken part in its proceedings.'[2] Thus, whatever differences of opinion may exist among the Members of the Council on any matter or matters, the Council must ordinarily act as a unit on all questions that may arise in the Indian Legislature or in

Its Unity.

[1] See para. 34 of *The Montagu-Chelmsford Report*.
[2] 'Communique' on the Munitions Fraud Case.

connection with the administration of public affairs. Every Member of the Council must take the same oaths of allegiance and office as we have seen in the case of the Viceroy. Besides, he has to take the following oath of secrecy :—[1]

I, . . . , do swear that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration, or shall become known to me as a member of the Executive Council except as may be required for the due discharge of my duties as such member, or as may be specially permitted by the Governor-General.

So help me God.

Restriction on the power of the Governor-General in Council to make war or treaty.

Section 44 of the Government of India Act sets forth the powers of the Governor-General in Council with regard to the making of war or treaty. He cannot, without the express sanction of the Secretary of State in Council, 'declare war or commence hostilities or enter into any treaty for making war against any Prince or State in India, or enter into any treaty for guaranteeing the possessions of any such Prince or State.' But he will not be subject to this restriction when hostilities have been actually commenced or preparations for their commencement have been actually made against the British Government in India or against any Prince or State dependent on it, or against any Prince whose territories the Crown is bound by treaty to defend or guarantee.

When he commences any hostilities or makes any treaty, he must forthwith communicate the same, with his reasons therefor, to the Secretary of State.

Section 71 of the Act provides a 'summary legislative procedure for the more backward parts of British India.'

[1] Vide *The Gazette of India*, June 11, 1921, pp. 850-51.

Under it the local Government of any part of British India may propose to the Governor-General in Council the draft of any regulation for the peace and good government of that part, with the reasons for proposing the regulation. Thereupon the Governor-General in Council may take the draft and reasons into consideration; and when the draft is approved by the Governor-General in Council and assented to by the Governor-General, it must be published in the *Gazette of India* and in the local official *Gazette*, if any, and will thereupon have the same force of law and be subject to the same disallowance as if it were an Act of the Indian Legislature. The Governor-General must send to the Secretary of State in Council an authentic copy of every regulation to which he has assented under this section. The Secretary of State may, by resolution in Council, apply this section to any part of British India and withdraw the application of this section from any part to which it has been applied.

Power to make regulations.

The authors of the Joint Report recommended that provision should be made (in the Government of India Act) for the appointment of members of the Legislative Assembly, not necessarily elected, nor even non-official, to positions analogous to those of Parliamentary Under-Secretaries in England.[1] The Governor-General in Council was opposed to appointments of this nature as he felt that it would be inadvisable to complicate the working of the Government of India in the difficult times that were before him by an arrangement which could not be justified on strong grounds, but which might be misconstrued as an attempt to introduce by a side issue the ministerial system into the Government of India.[2] The Joint Select Committee inserted,[3] however, a provision in

The Council Secretaries.

[1] *The Montagu-Chelmsford Report*, para. 275.
[2] Government of India's Despatch of March 5, 1919, para. 121.
[3] The Joint Select Committee's Report on Clause 29 of the Government of India Bill.

the Government of India Bill to allow of the selection of Members of the Legislature who would be able to undertake duties similar to those of the Parliamentary Under-Secretaries in England. It should be, it held, entirely at the discretion of the Governor-General to say to which Departments these officers should be attached, and to define the scope of their duties. This, in brief, is the history of Section 43A of the Act which provides, as has been stated before, that the Governor-General may at his discretion appoint, from among the members of the Legislative Assembly, Council Secretaries who will hold office during his pleasure and discharge such duties in assisting the Members of his Executive Council as he may assign to them. They are to be paid such salary as may be provided by the Indian Legislature. A Council Secretary must cease to hold office if he ceases for more than six months to be a member of the Legislative Assembly.

Advantages and disadvantages of the appointment of Council Secretaries.

No Council Secretary has been appointed so far (1929) in the Legislative Assembly since its inauguration. Early in 1922, Mr. R. A. Spence[1] (Bombay: European) moved a resolution in the Legislative Assembly requesting the Government to associate members of the Legislative Assembly with the Departments of the Government of India other than the Army and Foreign and Political Departments, in order that they might be trained up in the 'administration of government' and might relieve the Government Members and Secretaries of a part at least of their work in the sessions of the Legislature. His main argument was that such association would enable many members of the Assembly to see 'the inner working[2] of the Government Departments.' Sir

[1] See *India's Parliament*, vol. iii, pp. 332–40; or the Legislative Assembly Proceedings of March 28, 1922.
[2] *Ibid.*

William Vincent[1] (the then Home Member) pointed out, in the course of his reply, the advantages and disadvantages of the appointment of Council Secretaries. First, such appointments had their educative value. Non-officials, he said, by serving in the Secretariat as Council Secretaries, would undoubtedly obtain a considerable experience of the administration which might be very useful to them in future. Secondly, such appointments would afford relief to the permanent officials in the conduct of business in the Legislature. Thirdly, the appointment of Council Secretaries would necessarily bring the Government into closer touch with the non-official element in the Assembly. On the other hand, the Home Member pointed out, if the object of the appointment of Council Secretaries was to be realized, they would have to be chosen from the non-official members of the Assembly. 'Now,' he continued, 'if the Government appointed a Council Secretary and put him on the Government Benches, took him into their inner Councils and showed him the papers of the Department, he would have to support the Government policy throughout. That is a first essential: no one can deny that, and then the question at once arises whether it would be possible for such a member to discharge his responsibilities *vis-a-vis* the Government by which he is employed as well as his duty *vis-a-vis* his electorate. . . . He would often be torn in two directions by what he conceived to be his duty to the electorate and by what he conceived was demanded of him by loyalty to the Government. I fear indeed that his position would often be one of very great difficulty.' Another point to be noted in connection with this question, said he, was whether the services of the best men would be available for prolonged periods and whether they would sacrifice their

[1] See *India's Parliament*, vol. iii, pp. 332–40; or the Legislative Assembly Proceedings of March 28, 1922.

private careers and business to work in a Government office. Lastly, it was pointed out that whoever would be appointed Council Secretary would have to sever himself from the party to which he belonged.

The resolution moved by Mr. Spence was ultimately negatived by the Assembly. The matter since stands where it stood.

Relations between the Government of India and the provincial Governments—Before the Reforms.

The authority of the Government of India over provincial administration is derived[1] 'from the provisions of a considerable number of statutes and regulations which specially reserve power to the Governor-General in Council, or require his previous sanction or subsequent approval to action taken by the provincial Governments.' The Government of India Act, 1915, vested the superintendence, direction and control of the civil and military government of India in the Governor-General in Council and required him to pay due obedience to all such orders as he might receive from the Secretary of State.[2] And every local Government was required by the same Act to obey the orders of the Governor-General in Council, and to keep him constantly and diligently informed of its proceedings and of all matters which should, in its opinion, be reported to him, or as to which he required information, and was declared to be under his superintendence, direction and control in all matters relating to the government of its province.[3] The substance of these provisions can be found in the Charter Acts of the earlier days of the Company's rule, and specially in the Act of 1833.[4] The general principles which

[1] See para. 26 of the *Report of the Committee on Division of Functions*.

[2] Section 33 of the Government of India Act, 1915.

[3] Section 45, *ibid*.

[4] We must ignore, however, the *formal* differences. See Sections 25, 39, 65 and 80 of the Charter Act of 1833.—P. Mukherji's *Constitutional Documents*, vol. i.

governed the relations between the Government of India and the provincial Governments in the pre-Reforms days were laid down so far back as 1834 and 1838 in two despatches[1] addressed by the Court of Directors to the Governor-General in Council. Both these despatches related to the Charter Act of 1833 with special reference to its enforcement. Among other things they contained the following :—

'The whole civil and military government of India is in your hands, and for what is good or evil in the administration of it, the honour or dishonour will redound upon you.

'With respect to the other powers which you are called upon to exercise, it will be incumbent upon you to draw, with much discrimination and reflection, the correct line between the functions which properly belong to a local and subordinate Government and those which belong to the general Government ruling over and superintending the whole.

'Invested as you are with all the powers of Government over all parts of India, and responsible for good government in them all, you are to consider to what extent, and in what particulars, the powers of Government can be best exercised by the local authorities, and to what extent, and in what particulars, they are likely to be best exercised when retained in your own hands. With respect to that portion of the business of government which you fully confide to the local authorities, and with which a minute interference on your part would not be beneficial, it will be your duty to have always before you evidence sufficient to enable you to judge if the course of things in general is

[1] Despatch from the Court of Directors to the Government of India, No. 44, dated December 10, 1834, and despatch from the Court of Directors to the Government of India, No. 3, dated March 28, 1838. *Vide* the *Report of the Royal Commission upon Decentralization in India*, 1909, pp. 22–3.

good, and to pay such vigilant attention to that evidence as will ensure your prompt interposition whenever anything occurs which demands it.

'It was impossible for the Legislature, and it is equally so for us in our instructions, to define the exact limits between a just control and a petty, vexatious, meddling interference. We rely on the practical good sense of our Governor-General in Council, and of our other Governors, for carrying the law into effect in a manner consonant with its spirit, and we see no reason to doubt the possibility of preserving to every subordinate Government its due rank and power, without impairing or neutralizing that of the highest.'

'Although a minute interference on your part in the details of the local administration of the subordinate presidencies is neither desirable nor practicable, yet we should hold you but ill-acquitted towards those whose interests are committed to your charge, if you should allow to pass without comment and, if necessary, without effective interference, any measures having, in your opinion, an injurious tendency either to one presidency or to the Empire at large.'[1]

Pre-Reforms distribution of the functions of Government.

The actual distribution of functions, before the Reforms, between the Government of India and the provincial Governments was the result, as the Decentralization Commission stated,[2] of gradual administrative evolution. Certain important subjects like the defence of India, currency, tariffs, general taxation, posts and telegraphs, auditing and accounts, relations with the Native States and neighbouring powers, and railways were retained by the central Government in its own hands. And subject to the control and

[1] This extract is from the Despatch No. 3, dated March 28, 1838.

[2] Para. 45 of its Report.

direction of the central Government, the provincial Governments were placed in charge of the ordinary internal administration, police, justice, the assessment and collection of revenues, education, local self-government and a number of other subjects. But in spite of this division of functions between the central and local authorities and the delegation of wide powers and responsibilities by the former to the latter, the Government of the country before the Reforms was one. The dominant conception that underlay the whole arrangement was that 'the entire governmental system was one indivisible whole and amenable to Parliament.'[1] Even in respect of matters which were primarily assigned to them, the provincial Governments were literally the 'agents' of the Government of India.[2]

How control was exercised by the Central Government.

The control of the Government of India over the provincial Governments used to be actually exercised in the following ways[3] :—

(1) By financial rules and restrictions, including those laid down by Imperial departmental codes (e.g., the Civil Service Regulations, the Civil Account Code, the Public Works Code, and the like).

(2) By general or particular checks of a more purely administrative nature, which might (*a*) be laid down by law or by rules having the force of law, or (*b*) have grown up in practice.

(3) By preliminary scrutiny of proposed provincial legislation, and sanction of Acts passed by the provincial legislatures.

[1] See *The Montagu-Chelmsford Report*, paras. 50, 90 and 120.

[2] *Ibid.*, para. 120. Also see para. 44 of the *Report of the Royal Commission upon Decentralization in India*.

[3] Para. 50 of the *Report of the Royal Commission upon Decentralization in India*. See also in this connection the *Report of the Committee on Division of Functions* (para. 26), and *The Montagu-Chelmsford Report*, paras. 112–18.

(4) By general resolutions on questions of policy, issued for the guidance of the provincial Governments. These were often based on the reports of commissions or committees, appointed from time to time by the Government of India to enquire into the working of the departments with which the provincial Governments were directly concerned.

(5) By instructions to particular local Governments in regard to matters which might have attracted the notice of the Government of India in connection with the departmental administration reports periodically submitted to it, or the proceedings-volumes[1] of a local Government.

(6) By action taken upon matters brought to notice by the Imperial Inspectors-General.

(7) In connection with the right of appeal possessed by persons dissatisfied with the actions or orders of a provincial Government.

The present position as regards the control exercised by the Government of India over local Governments.

The position is somewhat different now as there has been a large measure of devolution of powers to the provincial Governments under the Reforms Scheme, though, be it noted, nothing has yet been done, as has been shown before, in law and theory, to destroy the unitary character of our constitutional system. The Government of our country is, theoretically, still one. The Government of India Act and the Rules made thereunder have provided, however, for the classification of functions of Government as central and provincial and for the division of the provincial subjects into Reserved and Transferred. The central subjects are under the direct administration of the Government of India and subject to legislation by the Indian Legislature. The provincial subjects, on the other hand, are administered by the provincial Governments and

[1] *I.e.*, the proceedings of the local Government which had to be sent to the Government of India every month. This is required by the Act even now.

subject to legislation by the provincial Legislatures except where otherwise stated by the Act and the Rules made thereunder. For instance, some provincial subjects, though administered by the provincial Governments, are subject to legislation by the Indian Legislature.[1] For the administration of the central subjects the Government of India is responsible to the Secretary of State and to the Imperial Parliament. We have previously discussed the question of its relation to the Home Government. We shall now consider the nature of its present control over the local Governments.

Let us first of all consider the exact legal position. The Government of India Act lays down :—

Subject to the provisions of the Act and Rules made thereunder,—

(1) the superintendence, direction and control of the civil and military government of India is vested in the Governor-General in Council, who is required to pay due obedience to all such orders as he may receive from the Secretary of State ; [2] and

(2) every local Government shall obey the orders of the Governor-General in Council, and keep him constantly and diligently informed of its proceedings and of all matters which ought, in its opinion, to be reported to him, or as to which he requires information, and is under his superintendence, direction and control in all matters relating to the government of its province.[3]

It will be seen from the above that the Government of India Act has simply re-enacted the relevant provisions of the Act of 1915, as stated before,[4] with this limitation only that those provisions are now subject to some of its own provisions and Rules made thereunder. The phrase

[1] See Appendix B, Schedule 1, part 11.
[2] Section 33 of the Act.
[3] Section 45 of the Act.
[4] See page 386 *ante*.

'subject to the provisions of the Act and Rules made thereunder' has a special significance in view of the fact that, so far as the administration of the Transferred subjects is concerned, the responsibility of the local Governments is not to Parliament or to its representatives, the Secretary of State and the Government of India, but to the local Legislative Councils, and also in view of the fact that the control of the Governor-General in Council, and thus of the Secretary of State, over those subjects has been restricted by Rules within very narrow limits. We have, in the preceding chapter,[1] discussed the nature of the control which the Secretary of State can exercise over the administration of the Transferred subjects. We have also shown in that connexion where the previous sanction of the Secretary of State in Council or of the Governor-General in Council is required by Rules for including a proposal for expenditure on a Transferred subject in a demand for a grant. As regards the control of the central Government over the Transferred subjects, however, it is laid down in Devolution Rule 49 as follows:—

Central control over Transferred subjects.

'The powers of superintendence, direction and control over the local Government of a Governor's province vested in the Governor-General in Council under the Act shall, in relation to Transferred subjects, be exercised only for the following purposes, namely:—

(1) to safeguard the administration of central subjects;

(2) to decide questions arising between two provinces, in cases where the provinces concerned fail to arrive at an agreement; and

(3) to safeguard[2] the due exercise and performance of any powers and duties possessed by, or imposed on, the Governor-General in Council under, or in connexion with,

[1] See pp. 327–33.

[2] See page 329 *ante*.

or for the purposes of, the following provisions of the Act, namely, section 29A, section 30(1-A), Part VIIA, or of any rules made by, or with the sanction of, the Secretary of State in Council.'

We may note in this connection the observations of the Joint Select Committee on the above Rule. The Committee said[1] :—

'A clause has been added, identical in form, *mutatis mutandis*, with a clause added to the corresponding rule under section 33 (of the Act of 1919), in order to enable intervention in transferred administration for the purposes of carrying out the provisions of the Act relating to the office of High Commissioner, the control of provincial borrowing, the regulation of the services, the duties of the Audit Department, and for the enforcement of certain rules which are intended to place restrictions on the freedom of Ministers, such as the rules[2] requiring the employment of officers of the Indian Medical Service and the rules[3] contained in Schedule III.'

It is true that the assent of the Governor-General is still essential to the validity of a provincial Act, whether it relates to a Reserved or to a Transferred subject, and, therefore, it may be said that he may control provincial legislation by exercising his right of withholding his assent. But it is extremely unlikely that his assent will be ordinarily refused to any provincial Act which has already received the assent of the Governor of the province concerned, as such refusal will precipitate a constitutional crisis.

Finally, we may observe here that the power of control vested at present in the Government of India and in the Secretary of State in Council over the administration of the Transferred subjects, should be further reduced substantially

[1] Second Report from the Joint Select Committee on the Government of India Act, 1919 (Draft Rules). See also page 329 *ante*.

[2] See Devolution Rule 12. Appendix B. [3] See Appendix B.

and be truly restricted, as the Joint Select Committee recommended, within the narrowest possible limits. This reduction is essentially necessary for the independence and dignity of Ministers and also for making the control of the Legislative Council over them more effective and real.

Central control over Reserved subjects.

The provincial Governments are still responsible for the administration of the Reserved subjects to the Government of India, and ultimately to Parliament through the Secretary of State. In the case of these subjects there is no such statutory Rule restricting the power of control and interference vested in the Government of India (or the Secretary of State) as there is in the case of the Transferred subjects. The Joint Select Committee was opposed to any 'statutory divestment of control except over the transferred field.'[1] Thus the authority of the Governor-General in Council remains unimpaired in respect of the Reserved subjects. Recommendations have been made, however, by authoritative persons and bodies as to what should be the attitude of the central Government towards them. In the sphere of legislation the central Government should not, according to the authors of the Joint Report, interfere in provincial matters unless the interests for which it is itself responsible are directly affected.[2] As regards administrative interference in provincial matters, however, the authors remarked[3] :—

'We recognize that, in so far as the provincial Governments of the future will still remain partly bureaucratic in character, there can be no logical reason for relaxing the control of superior official authority over them nor indeed would any general relaxation be approved by

[1] Second Report from the Joint Select Committee on the Government of India Act, 1919 (Draft Rules)—Rule under Section 33 of the Act of 1919.

[2] Joint Report, para. 212.

[3] *Ibid.*, para. 213

Indian opinion; and that in this respect the utmost that can be justified is such modification of present methods of control as aims at getting rid of interference in minor matters, which might very well be left to the decision of the authority which is most closely acquainted with the facts.'

The Crewe Committee stated[1]:—'It appears to us to follow from our general reasoning that, in so far as provincial action comes under the cognizance of the Secretary of State, either directly or through the Government of India, he should regulate his intervention with regard to the principle which we have sought to apply to the working of the central Government, namely, that where the Government find themselves in agreement with a conclusion of the Legislature, their joint decision should ordinarily be allowed to prevail.' The Joint Select Committee also recommended[2]:—'In purely provincial matters, which are Reserved, where the provincial Government and Legislature are in agreement, their view should ordinarily be allowed to prevail, though it is necessary to bear in mind the fact that some Reserved subjects do cover matters in which the central Government is closely concerned.' Finally, it is laid down in the Royal Instructions[3] to the Governor-General as follows:—

'In particular it is Our will and pleasure that the powers

[1] Majority Report, para. 18.

[2] The Joint Select Committee's Report on Clause 33 of the Government of India Bill, 1919.

The Committee also said in another part of its Report:—

'India is not yet ripe for a true federal system, and the central Government cannot be relegated to functions of mere inspection and advice. The Committee trust that there will be an extensive delegation, statutory and otherwise, to provincial Governments of some powers and duties now in the hands of the Government of India; and they trust also that the control of that Government over provincial matters will be exercised with a view to preparing the provinces for the gradual transfer of power to the provincial Government and Legislature.' Report on Clause 3 of the Government of India Bill.

[3] See Appendix N. Vide *The Indian Year Book*, 1923, p. 44.

of superintendence, direction and control over the said local Governments vested in Our said Governor-General and in Our Governor-General in Council shall, unless grave reason to the contrary appears, be exercised with a view to furthering the policy of the local Governments of all Our Governors' provinces, when such policy finds favour with a majority of the members of the Legislative Council of the province.'

To what extent the above recommendations have actually been followed in practice, it is difficult for us to say, as we have no intimate knowledge of the working of the administrative machinery. By the Devolution Act of 1920, however, the control of the Governor-General in Council over local Governments has been relaxed in certain directions, and certain powers which used to be formerly exercised by the Government of India have now been delegated to the local Governments. This has been done partly in pursuance of a recommendation of the Committee on Division of Functions, which was accepted by the Government of India, and partly for the furtherance of the purposes of the Government of India Act. In regard to the question of the financial powers of the local Governments under the Reforms Scheme, we propose to deal with it in a subsequent chapter.

Duty of local Governments to supply information.

Every local Government is required by Devolution[1] Rule 5 to furnish to the Governor-General in Council from time to time such returns and information on matters relating to the administration of provincial subjects as the Governor-General in Council may require and in such form as he may direct. Besides, it is required to submit its own proceedings to the Government of India.

[1] See Appendix B.

Power to declare and alter boundaries of provinces.

Finally, we may note here that the 'Governor-General in Council may,[1] by notification, declare, appoint or alter the boundaries of any of the provinces into which British India is for the time being divided, and distribute the territories of British India among the several provinces thereof in such manner as may seem expedient,' subject, however, to the following qualifications, namely :—

(1) 'an entire district may not be transferred from one province to another without the previous sanction of the Crown, signified by the Secretary of State in Council; and

(2) any such notification may be disallowed by the Secretary of State in Council.'

[1] Section 60 of the Act.

CHAPTER XXI

PROVINCIAL GOVERNMENTS

How the domain of the provincial Government came to be partitioned into two fields—Governors' provinces—Inequality of their status—Duties and responsibilities of the Governor—Royal Instructions to him—The Executive Council of a Governor—Procedure at meetings of the Executive Council—Nature of the Council—Salaries of Councillors—Ministers and the methods of their appointment—Practice in other countries—Tenure of office of a Minister—The colonial system—The British system—The Minister's salary—Can the salary of the Minister be refused *in toto?*—How to express want of confidence in a Minister or to pass on him a vote of censure—The Bengal case—The law relating to the Minister's salary should have been more definite—Relation of the Governor to Ministers—The Transferred Subjects (Temporary Administration) Rules—Council Secretaries—Business of the Governor in Council and the Governor with his Ministers—Position of the Governor in the Government of his province—Matters affecting both Reserved and Transferred subjects—Allocation of revenues for the administration of Transferred subjects—Regulation of the exercise of authority over the members of public services—Provincial Finance Department and its functions—Agency employment of local Governments—Classification of the functions of Government, how made—How further transfers can take place—Revocation or suspension of transfer—Constitution of a new Governor's province—Provision as to backward tracts—Lieutenant-Governorships—Chief Commissionerships—Legislative Councils in Lieutenant-Governors' and Chief Commissioners' provinces, how constituted—Their functions.

How the domain of the provincial Government came to be partitioned into two fields.

The historic announcement made on August 20, 1917, began with the following declaration of the policy of His Majesty's Government with regard to India :—

'The policy of His Majesty's Government, with which the Government of India are in complete accord, is that of the increasing association of Indians in every branch of the administration and the gradual development of self-governing

institutions with a view to the progressive realization of responsible government in India as an integral part of the British Empire. They have decided that substantial steps in this direction should be taken as soon as possible. . . .'

In order that effect might be given to the underlying spirit of this policy, the authors of the Joint Report made, among others, the following recommendation[1] :—

'The provinces are the domain in which the earlier steps towards the progressive realization of responsible government should be taken. Some measure of responsibility should be given at once, and our aim is to give complete responsibility as soon as conditions permit. This involves at once giving the provinces the largest measure of independence, legislative, administrative and financial, of the Government of India which is compatible with the due discharge by the latter of its own responsibilities.'

Discussing the structure of the provincial Executive, the authors said[2] :—' We start with the two postulates that complete responsibility for the government cannot be given immediately without inviting a breakdown, and that some responsibility must be given at once if our scheme is to have any value. . . . We do not believe that there is any way of satisfying these governing conditions other than by making a division[3] of the functions of the provincial

[1] Joint Report, para. 189. [2] Joint Report, para. 215.

[3] We may also note here the observations of the authors on the principle of such division :—

The guiding principle 'should be to include in the transferred list those departments which afford most opportunity for local knowledge and social service, those in which Indians have shown themselves to be keenly interested, those in which mistakes which may occur though serious would not be irremediable, and those which stand most in need of development. In pursuance of this principle we should not expect to find that departments primarily concerned with the maintenance of law and order were transferred. Nor should we expect the transfer of matters which vitally affect the well-being of the masses who may not be adequately represented in the new councils, such for example as questions of land revenue or tenant rights'.—Joint Report, para. 238.

Government between those which may be made over to popular control and those which for the present must remain in official hands. . . . We may call these the "transferred" and "reserved" subjects, respectively.' Continuing, they said further[1] :—

'We propose therefore that in each province the executive Government should consist of two parts. One part would comprise the head of the province and an executive council of two members. In all provinces the head of the Government would be known as Governor, though the common designation would not imply any equality of emoluments or status, both of which would continue to be regulated by the existing distinctions, which seem to us generally suitable. One of the two executive councillors would in practice be a European, qualified by long official experience, and the other would be an Indian. . . . The Governor in Council would have charge of the reserved subjects. The other part of the Government would consist of one member, or more than one member, according to the number and importance of the transferred subjects, chosen by the Governor from the elected members of the Legislative Council. They would be known as ministers. They would be members of the executive Government, but not members of the Executive Council.'

Governors' provinces.

This, in brief, is the history of the partition of the domain of the provincial Government into two fields, one of which has, as we shall soon see, been made over to Ministers appointed from among the elected members of the provincial Legislative Council while the other has remained under the administration of the Governor in Council. Under Section 46 of the Act, the presidencies of Bengal, Madras and Bombay, and the provinces known as the United Provinces, the Punjab, Bihar and Orissa, the

[1] Joint Report, para. 218.

Central Provinces and Assam are each governed, in relation to Reserved subjects, by a Governor in Council, and in relation to Transferred subjects, ordinarily[1], by the Governor acting with Ministers appointed under the Act. The province of Burma, as has been stated before, was at first excluded from the scheme of Reforms introduced by the Act of 1919; but since January 2, 1923, it has been constituted a Governor's province under the Government of India Act. We may note here that the presidencies and provinces mentioned above are referred to in the Act as 'Governors' provinces'. But they do not enjoy the same status. The Governors of Bengal, Madras and Bombay are appointed by the Crown,[2] and are usually chosen from among persons of high rank and administrative experience in Great Britain. The Governors of the other provinces are appointed by the Crown after consultation with the Governor-General.[3] The intention of the framers of the Act in making this distinction probably was that these Governorships would ordinarily be filled by the appointment of distinguished members of the Indian Civil Service; and as a matter of fact, they have generally[4] been so filled hitherto. It may be noted here that there is nothing in the Act to prevent all the Governors being appointed from among the members of the Indian Civil Service.

Inequality of their status.

Secondly, the presidency Governments enjoy the privilege of direct correspondence with the Secretary of State on certain matters, and can appeal to him against orders of the Government of India;[5] but such an appeal must

[1] See Appendix D.
[2] Section 46 (2) of the Act.
[3] *Ibid.*
[4] The appointment of Lord Sinha as Governor of Bihar and Orissa was a notable exception.
[5] *Decentralization Commission's Report*, para 26.
This 'right,' says Sir Malcolm Seton, 'had not always been viewed with benevolent eyes by the Government of India, but restrictive

pass through, or be communicated, to the latter. Again, if a vacancy occurs in the office of Governor-General when there is no successor in India to fill the vacancy, the Governor of a presidency, 'who was first appointed to the office of Governor of a presidency', is to hold and execute the office of Governor-General until a successor arrives or until some person in India is duly appointed thereto.[1]

Finally, there are differences in the maximum annual salaries payable to the Governors under the Act. The Governors of Bengal, Madras, Bombay and the United Provinces are each entitled to the maximum salary of Rs. 1,28,000 per annum; those of the Punjab, Burma and Bihar and Orissa to Rs. 1,00,000 per annum; and those of the Central Provinces and Assam to Rs. 72,000 and Rs. 66,000 per annum respectively.[2]

Duties and responsibilities of the Governor.

The Governor of a province is charged with various heavy duties and responsibilities. They have been imposed on him either by statute or by the Instrument of Royal Instructions issued to him. We have previously referred to some of

rules and the modern standardisation of Indian administration, following on the amalgamation of the once separate Presidency Civil Services and the Presidency Armies, prevent the danger of cross-purposes in the official correspondence.'—*The India Office*, pp. 48-49.

[1] Section 90 of the Act. It may also be noted here that a temporary vacancy in the office of Governor in any province may be filled by the Vice-President, or, if he is absent, by the senior member of the Governor's Executive Council, or, if there is no Council, by the Chief Secretary to the local Government, until a successor arrives, or until some other person is duly appointed thereto. Every such acting Governor is entitled to receive the emoluments and advantages appertaining to the office of Governor, 'foregoing the salary and allowances appertaining to his office of member of council or secretary.' Section 91 of the Act. But see also pp. 363-64 *ante* and *Appendix O*.

[2] Second Schedule to the Government of India Act. The actual amount, within the maximum, is fixed in each case by the Secretary of State in Council. The Governors of Bengal, Bombay, Madras and the United Provinces actually receive each a salary of Rs. 1,20,000, per annum; those of the Punjab, Burma and Bihar and Orissa each Rs. 1,00,000 per annum; and those of the Central Provinces and Assam receive Rs. 72,000 and Rs. 66,000 per annum respectively.

them in relation to his Legislative Council. We shall have occasion in future to describe others, specially those in relation to his Ministers. We may, in particular, mention here that he is specially enjoined [1] by the Royal Instructions—

Royal Instructions to him.

(1) to further the purposes of the Government of India Act to the end that the institutions and methods of Government provided therein are laid upon the best and surest foundations, that the people of his province acquire such habits of political action and respect such conventions as will best and soonest fit them for self-government, and that the authority of the Crown and of the Governor-General in Council is duly maintained;

(2) to see that whatsoever measures are in his opinion necessary for maintaining safety and tranquillity in all parts of his province, and for preventing occasions of religious or racial conflict are duly taken and that all orders issued by the Secretary of State or by the Governor-General in Council on behalf of the Crown, to whatever matters relating, are duly complied with;

(3) to take care that due provision is made for the advancement and social welfare of those classes amongst the people committed to his charge who, whether on account of the smallness of their number, or their lack of educational or material advantages, or from any other cause, specially rely upon his protection and cannot as yet fully rely for their welfare upon joint political action, and that such classes do not suffer or have cause to fear neglect or oppression;

(4) to see that every order of his Government and every act of his Legislative Council are so framed that none of the diverse interests of, or arising from, race, religion, education, wealth, etc., may receive unfair advantage or may

[1] See Appendix M.

unfairly be deprived of privileges or advantages which they have heretofore enjoyed, or be excluded from the enjoyment of benefits which may be conferred on the people at large;

(5) to safeguard all members of the services employed in his province in the legitimate exercise of their functions, and in the enjoyment of all recognized rights and privileges, and to see that his Government order all things justly and reasonably in their regard, and that due obedience is paid to all just and reasonable orders and diligence shown in their execution; and

(6) finally, to take care that no monopoly or special privilege, which is against the common interest, is established in his province and no unfair discrimination is made therein in matters affecting commercial or industrial interests.

The Governor enjoys the same legal immunities as the Viceroy,[1] and he has, as has been seen before, to take the same oaths of allegiance and office as the latter.

The Executive Council of a Governor.

The members of a Governor's Executive Council are appointed by the Crown.[2] Their actual number, within the statutory maximum of four, is as determined by the Secretary of State in Council.[3] One at least of the members must be a person who at the time of his appointment has been for at least twelve years in the service of the Crown in India.[4] Provision may be made by Rules under the Act as to the qualifications to be required in respect of the other members of the Council. The Governor appoints a member of his Executive Council to be its Vice-President. We may note in this connection the following observations[5] of the Joint Select Committee

[1] Section 110 of the Act. Also see pp. 356–57 *ante*.
[2] *Ibid.* 47 of the Act.
[3] *Ibid.* [4] *Ibid.*
[5] The Joint Select Committee's Report on Clause 5 of the Government of India Bill.

on the constitution of the provincial Executive Councils :—

'The Committee are of opinion that the normal strength of an executive council, especially in the smaller provinces, need not exceed two members. They have not, however, reduced the existing statutory maximum of four; but if in any case the council includes two members with service qualifications, neither of whom is by birth an Indian, they think that it should also include two unofficial Indian members.'

As a matter of fact, the number of Councillors in the different Executive Councils constituted under the Reforms has varied from two to four.[1]

The Secretary of State may, if he thinks fit, revoke or suspend, for such period as he may direct, the appointment of a Council for any or all of the Governors' provinces; and during the period of such suspension or revocation the Governor of the province concerned has all the powers of the Governor thereof in Council.[2]

Procedure at meetings of the Executive Council.

If any difference of opinion arises on any question brought before a meeting of a Governor's Executive Council, the Governor in Council is bound by the decision of the majority of those present, and, if they are equally divided, the Governor or any other person presiding has a second or casting vote.[3] If, however, any measure is proposed in the meeting whereby the safety, tranquillity or interests of his province, or of any part thereof, are, or may be, in the judgment of the Governor, essentially affected, he (i.e., the Governor) may, like the Governor-General, override the

[1] There were in 1927 four Executive Councillors in each of the presidencies of Bengal, Madras and Bombay and two in each of the remaining Governor's provinces. *The Combined Civil List for India* (1927). The Pioneer Press.

[2] Section 46 (3) of the Act.

[3] Section 50 (1) of the Act.

majority of his Council if they dissent from his view and act on his own authority and responsibility.[1] In every such case the Governor and the members of his Council present at the meeting must mutually exchange written communications, to be recorded in their secret proceedings, stating the grounds of their respective opinions, and the order of the Governor must be signed by the Governor and by those members. It may be noted in this connection that the Governor cannot, in the exercise of his overriding power, do anything which he could not lawfully have done with the concurrence of his Council.[2] The power to overrule the majority of his Council was first conferred upon the provincial Governor by the Charter Act of 1793. The only Governors then were the Governors of Madras and Bombay.

If a Governor absents himself from any meeting of his Executive Council owing to indisposition or any other cause, the Vice-President, or, if he too is absent, the senior member present at the meeting, will preside thereat,[3] and will have, while so presiding, the same powers as the Governor would have had if present. If, however, the Governor, although absent from the meeting, is at the time resident at the place where the meeting is held, and 'is not prevented by indisposition from signing any act of council made at the meeting', the act will require his signature; but if he refuses to sign it, the act will become null and void.[4]

Nature of the Council.

The members of a Governor's Executive Council are not responsible to his Legislative Council for the administration of the Reserved subjects. The Governor in Council is, as noted before, responsible for their administration to the Government of India and ultimately to the Imperial Parliament through the

[1] Section 50 (2) of the Act.
[2] Section 50 (4) of the Act.
[3] Section 51 of the Act.
[4] *Ibid.*

Secretary of State. The principle of the united and indivisible responsibility with all its implications, which, as we have previously seen, is a feature of the central Executive Council, applies equally to a provincial Executive Council, every member of which is required to take the same oaths of allegiance, office, and secrecy as a member of the Viceroy's Executive Council has to take.[1] The members of an Executive Council, central or provincial, enjoy the same legal immunities as the Viceroy or the Governor.[2]

Salaries of Councillors.

The salaries of the members of a Governor's Executive Council are not the same in all provinces. In Bengal, Madras, Bombay, and the United Provinces, an Executive Councillor receives annually sixty-four thousand rupees as his salary ; in the Punjab, Burma, and Bihar and Orissa, sixty-thousand rupees ; in the Central Provinces, forty-eight thousand rupees ; and in Assam, forty-two thousand rupees.[3]

Ministers and the method of their appointment.

The Governor of a province is empowered by Section 52 of the Act to appoint, by notification, Ministers for the administration of the Transferred subjects. Such Ministers will hold office during the pleasure of the Governor.[4] No official can be appointed to be a Minister. It may be interesting to note here that the authors of the Joint Report proposed that Ministers should be appointed for the lifetime of the provincial Legislative Council.[5] The Government of India opposed this proposal and stated in its first Despatch[6] on Indian Constitutional Reforms as follows :—
'We feel bound at all events to proceed on the assumption that a minister who finds himself at variance with the

[1] But in the case of the oath of secrecy, substitute 'Governor' for Governor-General'. See p. 382 *ante* and Appendix N.
[2] Section 110 of the Act.
[3] These are also the maximum amounts payable under the Act.
[4] Section 52 of the Act.
[5] Joint Report, para. 218.
[6] See para. 40 of the Despatch of March 5, 1919.

views of those who are in a position to control his legislation and his supply and to pass votes of censure upon his administration will recognize that he must make way for a more acceptable successor. That being so, we think that ministers must be assumed from the outset to be amenable to the legislature. It follows that they would not be appointed for the life-time of the Legislative Council but at pleasure; they would (in the absence of definite reasons to the contrary) be removable by an adverse vote of the Legislative Council; and, following the accepted practice elsewhere, the Governor would have power to dismiss them if he felt that the situation required such a course.'
Similarly, the Committee[1] on Division of Functions said:—
'Our proposal assumes that Ministers will hold office during the Governor's pleasure, and that he will have power to dismiss them. This seems essential if deadlocks are to be avoided.' In view of these suggestions, the proposal contained in the Joint Report was modified as stated above.

Practice in other countries.

It has been seriously suggested by many that the power of appointing Ministers should be taken away from the Governor and be vested in the Legislative Council. The idea is that the Council will formally elect its own Ministers. But the constitutional practice in England and in the self-governing Dominions like Canada, Australia and South Africa, is different. The Ministers of State in these countries are appointed, and may be dismissed, by the head of the Executive Government—the King in England and the Governor-General in the Dominions. This is the position in law; in actual practice, however, the choice of the Ministers by the head of the Executive Government is restricted within very narrow limits. But that is a

[1] See para. 61 of its Report.

different question. The practice which has stood the test of time in those countries and which has, as will be evident on a little reflection, its obvious merits,[1] should not be departed from in our country in view of the fact that the Parliamentary form of Government, already introduced partially, will be established in the near future in every sphere of Indian administration.

Whatever the position may be in theory, the power of the Governor to choose his own Ministers is actually limited[2] in practice, because the Joint Select Committee recommended that the Ministers selected by the Governor to advise him on the Transferred subjects should be elected

[1] As Prof. Garner says :—

' Both reason and experience teach that election by the legislature not only impairs the independence of the executive and tends to make him subservient to its will, but creates a powerful temptation to an ambitious candidate to gain the support of the legislature by promises of official reward or influence. Once elected, he is under the same temptation to secure re-election. To be fully independent of legislative control and free of such temptations, the executive must owe his office to a different source.

Finally, it should be observed that the imposition of so important a political duty upon the legislature is likely to interfere with its normal function of law-making, by introducing into its procedure a distracting element which on occasions of great and exciting contests must necessarily consume its time, lead to conflicts and deadlocks, and give a party colouring to the consideration of many measures which are in reality non-partisan in character."—*Introduction to Political Science*, p. 536.

[2] " The main principle which characterizes a system of responsible representative government is that the Executive should be selected from that group or party which comprises a majority of the legislature and that it should resign, if and when the majority of the legislature refuses to support it. This principle was intended by Parliament to operate here so far as the administration of Transferred subjects was concerned. A Governor is expected to select Ministers who can obtain the support of a majority of the members of the Legislative Council, but, should he fail to do so, the Council has the remedy in its own hands and can compel the resignation of the Ministers. . . . . Only such Ministers as can secure the support of the Council can remain in office. . . . . . I have no wish, and I have no power if I had the wish, to appoint Ministers that are unacceptable to the Council."—From a speech by His Excellency Lord Lytton, Governor of Bengal, delivered in the Bengal Legislative Council on January 11, 1927.

members of the Legislative Council, enjoying its confidence and capable of leading it. It is not possible for a Minister who does not enjoy such confidence, to remain long in office[1].

Tenure of office of a Minister.

A Minister is not an official in the legal sense of the term for electoral purposes. It is specially laid down in the Act that, for such purposes, 'a Minister shall not be deemed to be an official and a person shall not be deemed to accept office on appointment as a Minister'.[2] Nor is he required, after accepting office, to vacate his seat and to seek re-election. No Minister can hold office for a longer period than six months, unless he is or becomes an elected member of the local legislature.[3] This clause, as Mr. Montagu said in a Memorandum,[4] is modelled on the corresponding provisions[5] contained in some of the Dominion Constitutions. It does not mean that the Governor can arbitrarily appoint any person to be a Minister, or can retain in office a Minister, who has not been re-elected, for a further period of six months, after the expiration of the duration of one Legislative Council, or after its dissolution, against the wishes of the majority of the next Council. Were he to do so, the new Council would drive such a Minister out of office by passing, at its earliest opportunity, a motion of want of confidence in him (the Minister). The clause, in our opinion, has been inserted in order to enable the Governor to appoint as

The colonial system.

[1] The Joint Select Committee's Report on Clause 4 of the Government of India Bill

[2] Sec. 80 B of the Act. See pp. 72-3 in this connexion.

[3] Sec. 52 (2) of the Act.

[4] This Memorandum related to the Government of India Bill, 1919, and was presented to Parliament.

[5] See South Africa Act, 1909, Section 14, and the Commonwealth of Australia Act, 1900, Section 64. But it may be noted here that both in South Africa and Australia no Minister can hold office for a longer period than *three* months unless he is or becomes a member of either House of Parliament.

Minister a prominent party leader who may have been defeated at the previous election or who may not, for some other reason, happen to be a member of the Council for the time being, but who nevertheless, if appointed to the office of Minister, will be able to command a majority in the Council. Thus the Minister so appointed is given six months' time in which to secure a seat in the Council. And it may not be really difficult for him to secure his election after his appointment, if a member of his party is induced to vacate his seat in his favour. This is done also in England. It may be of interest to note here that even in the case of the British Parliament, the principle that every member of the Cabinet must be a member of one or the other House of the Legislature, is not absolute. Sir John Marriott has given, from the constitutional history of England in the nineteenth century, a number of specific instances [1] of the temporary exclusion of Cabinet Ministers from Parliament.

The British system.

The Joint Select Committee recommended [2] that the status of Ministers should be similar to that of the members of the Executive Council, but that their salaries should be fixed by the Legislative Council. Accordingly, it has been laid down in the Act [3] as follows :—

The Minister's salary.

'There may be paid to any minister so appointed in any province the same salary as is payable to a member of the

[1] 'In 1880 Sir William Harcourt, when Secretary of State for the Home Department, found himself temporarily without a seat in Parliament. The same fate befell Mr. Goschen when appointed Chancellor of the Exchequer in 1887. . . . More striking because more deliberate was the refusal of Mr. Gladstone to seek re-election at Newark when appointed by Sir Robert Peel to the Colonial Secretaryship in December 1845. As a result he was, though a leading member of the Cabinet, out of Parliament during the difficult and momentous Session of 1846.'—*English Political Institutions* by Sir John Marriott, p. 80.

[2] The Joint Select Committee's Report on Clause 4 of the Government of India Bill.

[3] Section 52 (1) of the Act

executive council in that province, unless a smaller salary is provided by vote of the legislative council of the province.'

Can the salary of the Minister be refused *in toto*?

It is evident from this clause that the salary of the Minister in a province may be less than what is paid to a Member of the Executive Council in that province, if the Legislative Council so determines it; though ordinarily, it will be equal to it. The question has been raised whether or not the salary of the Minister can be totally refused under the Act. This question involves a very difficult point of law, especially in view of the word 'may' in the clause. In the Commonwealth of Australia Act, 1900, the section [1] relating to the salaries of the Ministers of State is very clear and definite in its meaning, as will appear from the following quotation:—

'There *shall* be payable to the Queen, out of the Consolidated Revenue Fund of the Commonwealth, for the salaries of the Ministers of State, an annual sum, which until the Parliament otherwise provides, shall not exceed twelve thousand pounds a year.'

Contrasted with this, the Government of India Act is rather vague and indefinite on the question of the salary of the Minister. In spite of this, the expression 'smaller' in the clause quoted above indicates, negatively, that it could never have been the intention of the framers of the Act that the salary of the Minister could ever be lawfully refused *in toto*, and, positively, that the Minister *must* have a salary, however small its amount may be.[2]

[1] Section 66 of the Commonwealth of Australia Constitution Act, 1900.

[2] That our contention is right is specially proved by the fact that the original Government of India Bill, 1919, as presented to the House of Commons by Mr. Montagu, contained the following provision relating to the salary of the Minister:—

'There shall be paid to any minister so appointed such salary as the Governor, subject to the sanction of the Secretary of State, may determine'—(Section 3 (1) of the Government of India Bill, 1919).

It has been contended, however, that since Section 72D (2) of the Act empowers the Legislative Council to assent, or refuse its assent, to a demand, the demand for a grant on account of the salary of the Minister can be quite legally refused under this Section. It may be said against this contention that the question of the Minister's salary is to be treated as an exception to the general rule relating to the power of the Council in regard to the demands for grants. Were it not so, it would not have been specially provided for in Section 52 (1) of the Act. The clause relating to the Minister's salary is apparently incompatible with the clause relating to the general power of the Council with regard to the demands for grants. In such a case of incompatibility we should be guided by the generally accepted principles of interpretation of statutes. 'Where a general intention is expressed,' says Sir Peter Maxwell,[1] 'and also a particular intention which is incompatible with the general one, the particular intention is considered an exception to the general one. Even when . . . the later part of the enactment is in the negative, it is sometimes reconcilable with the earlier one by so treating it. If, for instance, an Act in one section authorized a corporation to sell a particular piece of land, and in another prohibited it from selling "any land," the first section would be treated not as repealed by the sweeping terms of the other, but as being an exception to it.'

Again :—

'A statute [2] is the will of the Legislature; and the fundamental rule of interpretation, to which all others are subordinate, is that a statute is to be expounded "according to the intent of them that made it."'

If the above reasonings are, as we believe them to be,

[1] See *On the Interpretation of Statutes* by Sir Peter Benson Maxwell (sixth edition), pp. 301-2.

[2] *Ibid.*, p. 1.

correct, it follows as a corollary that, if the salary of the Minister is totally refused, and if he continues in office after the refusal of his salary, he may, notwithstanding such refusal, be legally paid the same salary as is paid to a member of the Executive Council. It may be argued against this proposition that, if it is not lawful to increase by a single pie the salary of the Minister when it has been reduced by the Council to an abnormally low figure, say, of one rupee, it cannot be reasonably held to be legal to pay to the Minister the same salary as is paid to a member of the Executive Council in the province, when his salary has been refused *in toto*. The question, however, is not one of propriety, but of law. The Government of India Act being what it is, we hold that such payment, however, unreasonable, is still legal. But whether a Minister *ought* to continue in office after his salary has been rightly or wrongly refused, is a different question, and belongs to the domain of constitutional ethics rather than of constitutional law.

How to express want of confidence in a Minister or to pass on him a vote of censure.

It has been held by many that the Council may use the weapon of the refusal of the salary of the Minister to express its want of confidence in him, or to pass a vote of censure on him, in order to drive him out of office. But according to well-established Parliamentary conventions, the total refusal of the salary of a Minister is neither required, nor resorted to, for the purpose of expressing want of confidence in him or for passing upon him a vote of censure.[1] As His Excellency Lord Lytton, Governor of Bengal, stated in a letter,[2] addressed to the Secretary, Indian Association (Calcutta) :—

'The motive of those who record a vote is a relevant

[1] See also pages 290-91 *ante* in this connexion.

[2] This letter was written in reply to the 'memorandum submitted by the Indian Association for a reconsideration of the decision

consideration when the effect of the vote is capable of different interpretations; for instance, a reduction of a demand for a grant may indicate either an expression of censure on the policy of the Government making the demand, or a desire for reduction in the expenditure covered by the demand, and, since the vote is capable of either interpretation, the intention of those recording it may be gathered from the speeches which preceded it. . . . There are several ways in which the wish of the Legislative Council for the resignation of Ministers may be expressed. The first is by a resolution expressing want of confidence in the Ministers.[1] This may be moved in any session and must take the chance of the ballot together with other resolutions. Another method, which is only available during the debate on the budget or in connection with the demands for grants for Transferred departments, is to move a nominal reduction of, say, Rs. 100 in the demand for Ministers' salaries, or in any demand for a grant made by the Ministers.[2]

'Finally, in any sudden or special circumstances, where the other opportunities are not available, the Government may be asked to give time for the discussion of a resolution of censure.'[3]

It may be also pointed out here that even the passing by the Council of a nominal reduction of one rupee in the demand for the salary of the Minister is sure to be treated as a vote of censure upon the latter and to be followed by his resignation.[4] Thus it is open to the Council to adopt

proroguing the Council and submission of a fresh demand for Ministers' salaries in a new session'.—See *The Statesman* (Dak edition) of October 4, 1924.

[1] But see pp. 290-91 *ante* in this connexion.

[2] See in this connexion Lowell's *Government of England*, vol. i, pp. 282 and 346-48.

[3] But see pp. 290-91 *ante*.

[4] 'In order that the Council may express its opinion of each Minister individually, the Government will this year show separately the salary of each Minister in the estimate under the heading "General Administration", and any member will have an opportunity of

any of these methods for expressing its dissatisfaction with the Minister, and it need not go the length of refusing his salary in order to drive him out of office.

The Bengal case. The demand for Ministers' salaries had been twice rejected by the Bengal Legislative Council in the course of the year 1924—once on March 24th and again on August 26th. And the rejection on the second occasion was followed by the resignation of the Ministers and the temporary assumption by the Governor of the administration of the Transferred departments. The Government of Bengal accepted this rejection as final, as would appear from the following extracts from the Governor's letter already referred to above :—

'It is immaterial what the objects of those who voted for refusal may have been, as the consequences of the refusal are that no money is available and the purpose for which the demand was made (in this case the appointment of Ministers) cannot be carried out.'

Again :

'Those who voted for the total refusal of Ministers' salaries may assign what motives they please to their votes ; but no explanation can alter the fact that the refusal to provide any salaries has made the appointment of any Ministers impossible so long as that decision remains unaltered.'

Still, we believe that the questions yet remain undecided as to whether or not the Council, in rejecting the demand for the Ministers' salaries, acted legally, and also whether the Ministers might not be lawfully paid their salaries, if

expressing his want of confidence in either of the Ministers whom I have selected by moving a token reduction of one rupee in the salary demanded.'—From a speech by His Excellency Lord Lytton, Governor of Bengal, delivered in the Bengal Legislative Council on January 11, 1927. A token reduction of one rupee may also be moved for the purpose 'of criticizing some detail of a Minister's policy without necessarily requiring his resignation.'—*Ibid.*

they chose to continue in office, in spite of the rejection by he Council of the demand for them. But, though opinions nay be rightly divided as to whether or not the Council, in ejecting the demand, acted against the letter of the Constitution, there can be no doubt about the fact that in loing so it acted against its spirit, and also against the ntention of its framers. And it must be said to the credit, on the other hand, of many of those members of the Council vho voted for the rejection, that they made no secret of their belief that they were in the Council, not to work the ystem of government set up in the provinces by the Act f 1919, but to destroy it altogether, with a view to having better system of government established in its place.

he law lating the linister's alary hould ave been ore efinite.

In conclusion, we must say that the clause in the Government of India Act relating to the salary of the Minister ought to have been better drafted, and the intention of the authors of the Act regarding it ought to have been more clearly and definitely expressed.

elation f the overnor to linisters.

The views of the authors of the Joint Report[1] on the question of the relations between the Governor and his Ministers were thus stated :—

'The portfolios dealing with the transferred subjects would be committed to the ministers, nd on these subjects the ministers together with the overnor would form the administration. On such subjects eir decisions would be final, subject only to the Governor's dvice and control. We do not contemplate that from the itset the Governor should occupy the position of a purely nstitutional Governor who is bound to accept the decions of his ministers. Our hope and intention is that the nisters will gladly avail themselves of the Governor's

[1] Joint Report, para. 219.

27

trained advice upon administrative questions, while on his part he will be willing to meet their wishes to the furthest possible extent in cases where he realizes that they have the support of popular opinion. We reserve to him a power of control, because we regard him as generally responsible for his administration, but we should expect him to refuse assent to the proposals of his ministers only when the consequences of acquiescence would clearly be serious. Also we do not think that he should accept without hesitation and discussion proposals which are clearly seen to be the result of inexperience. But we do not intend that he should be in a position to refuse assent at discretion to all his ministers' proposals.'

In accordance with these proposals the following clause[1] has been inserted in the Act for the purpose of regulating the relations between the Governor and his Ministers :—

'In relation to transferred subjects, the Governor shall be guided by the advice of his ministers, unless he sees sufficient cause to dissent from their opinion, in which case he may require action to be taken otherwise than in accordance with that advice.'

Commenting on this clause in the Government of India Bill, the Joint Select Committee made the following observations :—

'The Committee[2] are of opinion that the ministers selected by the Governor to advise him on the transferred subjects should be elected members of the legislative council, enjoying its confidence and capable of leading it. A minister will have the option of resigning if his advice is not accepted by the Governor ; and the Governor will have the ordinary constitutional right of dismissing a minister

[1] Section 52 (3) of the Act.

[2] The Joint Select Committee's Report on Clause 4 of the Government of India Bill.

whose policy he believes to be either seriously at fault or out of accord with the views of the legislative council. In the last resort the Governor can always dissolve his legislative council and choose new ministers after a fresh election; but if this course is adopted, the Committee hope that the Governor will find himself able to accept such views as his new ministers may press upon him regarding the issue which forced the dissolution.'

Again:

'Ministers[1] who enjoy the confidence of a majority in their legislative council will be given the fullest opportunity of managing that field of government which is entrusted to their care. In their work they will be assisted and guided by the Governor, who will accept their advice and promote their policy whenever possible. If he finds himself compelled to act against their advice, it will only be in circumstances roughly analogous to those in which he has to override his executive council—circumstances which will be indicated in the Instrument of Instructions furnished to him on his appointment by His Majesty.'

The Royal Instrument[2] of Instructions referred to above directs the Governor to act as follows :—

'You shall assist Ministers by all the means in your power in the administration of the transferred subjects, and advise them in regard to their relations with the Legislative Council.

'In considering a Minister's advice and deciding whether or not there is sufficient cause in any case to dissent from his opinion, you shall have due regard to his relations with the Legislative Council and to the wishes of the people of the province as expressed by their representatives therein.'

[1] The Joint Select Committee's Report, para. 5.
[2] See Appendix M.

We shall later on describe what the relations between the Governor and his Ministers have been in the different provinces since the inauguration of the Reforms.

The Transferred Subjects (Temporary Administration) Rules.

Rules[1] may be made under the Act for the temporary administration of a Transferred subject where, in case of emergency, owing to a vacancy, there is no Minister in charge of the subject, by such authority and in such manner as may be prescribed by the Rules. Accordingly, the following Rules have been made :—

In case of emergency where, owing to a vacancy, there is no Minister in charge of a Transferred subject, the Governor—[2]

(1) must, if another Minister is available and willing to take charge of the subject, appoint him to administer the subject temporarily ; or

(2) must, if the vacancy cannot be provided for in the above way, himself temporarily administer the subject, and, while so doing, must exercise, in relation to it, all such powers in addition to his own powers as Governor as he could exercise if he were the Minister in charge thereof.

If the Governor himself undertakes temporarily to administer a Transferred subject, he must certify that an emergency has arisen in which, owing to a Ministerial vacancy, it is necessary for him to do so, and must forthwith forward a copy of such certificate to the Governor-General in Council. Such temporary administration by the Governor can continue until a Minister is appointed to administer the subject. The Governor cannot exercise, in respect of such subject, the power of certification of legislation vested in him by Section 72E of the Act.[3] Nor, it must be noted here, does the subject cease to be a Transferred subject in

[1] Proviso to Section 52 (3) of the Act. [2] See Appendix D.
[3] See pp. 221-22 *ante*.

such circumstances. As we shall see later, the revocation or suspension of transfer can only be made, under Devolution Rule 6, by the Governor-General in Council with the previous sanction of the Secretary of State in Council. But it is really difficult to say to whom the Governor is responsible when he takes over temporarily the administration of Transferred subjects. Lord Lytton's interpretation of the Act is that, 'according to the Constitution, he (i.e., the Governor) is responsible for the conduct of these subjects neither to the Legislative Council nor to the British Parliament[1]' . . . In the absence of anything to the contrary in any document connected with the Act, it seems to us that His Excellency's interpretation is correct. This is one of the anomalies in the existing Constitution of our country.

It may be of interest to mention here that when in 1924, the second rejection[2] of the demand for Ministers' salaries by the Bengal Legislative Council was followed by the resignation of the Ministers, the Governor (of Bengal) took over[3] temporarily the administration of the Transferred departments. Similarly, when the Ministers in the Central Provinces resigned early in the same year on account of their salaries having been reduced to a ridiculously low figure[4] by the local Legislative Council, the administration of the Transferred subjects was taken over temporarily by the Governor.

The Governor may[5] at his discretion appoint, from among the non-official members of his Legislative Council,

[1] This extract has been taken from a speech delivered by His Excellency Lord Lytton, Governor of Bengal, on November 24, 1924. Vide *The Statesman* (Dak edition) of November 26, 1924.

[2] This took place on August 26, 1924.

[3] In September, 1924.

[4] 'The Ministers' salaries were voted at Re. 1 a year for each Minister.'—App. 6 to the Report of the Reforms Enquiry Committee, 1924, Oral Evidence, vol. i, p. 2.

[5] Section 52 (4) of the Act.

Council Secretaries, who will hold office during his pleasure and discharge such duties in assisting the members of his Executive Council and his Ministers as he may assign to them. The Council Secretaries must be paid such salaries as may be provided by a vote of the Legislative Council. A Council Secretary must cease to hold office if he ceases for more than six months to be a member of the Legislative Council.

Council Secretaries.

This provision for the appointment of Council Secretaries has been made in accordance with the proposals contained in paragraph 224 of the Joint Report, which says :—

'The suggestion has been made to us that in some provinces it might be convenient, where the press of work is heavy, to appoint some members of the Legislative Council, not necessarily elected, to positions analogous to that of a parliamentary under-secretary in Great Britain, for the purpose of assisting the members of the executive in their departmental duties and of representing them in the Legislative Council. We feel no doubt that the elaboration of the machinery which is inevitable in future will impose greater burdens on the members of the Government. We suggest therefore that it may be advisable and convenient to take power to make such appointments.'

We have in another connection discussed the advantages and disadvantages of the appointment of Council Secretaries. Such appointments were made in some provinces with more or less success[1] in different departments. But

[1] 'In fact it may be said generally that Council Secretaries have proved the utility of the institution and have contributed towards the smooth working of the Council.'—Letter from the Government of Madras to the Reforms Enquiry Committee, 1924.

On the other hand :

'Council Secretaries did not make their influence felt in any marked degree or win a recognized position in the provincial constitution. This experiment must be classed as a failure.'—Letter from

if the experiment is to be made a real success, two main conditions must be fulfilled: the services of really able men, who will be available for prolonged periods and who will sacrifice their private careers and business to work in Government offices, have to be secured; and, secondly, they must be paid reasonable salaries.

Business of the Governor-in-Council and the Governor with Ministers.

All orders and other proceedings of a provincial Government must be expressed to be made by the Government of the province concerned. The Governor of each province has been empowered to make provision by rules for distinguishing orders and other proceedings relating to Transferred subjects from other orders and proceedings.[1] He has also been empowered to make rules and orders for the more convenient transaction of business in his Executive Council and with his Ministers, and, further, for regulating the relations between them.[2]

Instructions have been given by authoritative persons and bodies as to how the business of the Government of a Governor's province should be transacted. First of all, the authors of the Joint Report observed[3] :—

'It is our intention that the Government thus composed

the Government of the Central Provinces to the Reforms Enquiry Committee, 1924.

(Vide *Reports of the Local Governments on the working of the Reformed Constitution* (1924), pp. 41–42 and also p. 315.)

It is clear from the above two quotations that there is a difference of opinion regarding the usefulness of Council Secretaries. The Reforms Enquiry Committee recommended, however, that the provisions relating to Council Secretaries in the provinces should be so modified (*a*) as to provide that they must get a reasonable salary the amount of which would be determined by an Act of the local legislature: and (*b*) that 'on the transferred side the Minister should make recommendations for appointment as Council Secretaries for the approval of the Governor, and that, when appointed, they should hold and vacate office with the Minister.'—Majority Report, para. 105; also recommendation 22.

[1] Section 49 (1) of the Act. [2] Section 49 (2) of the Act.

[3] Joint Report, para. 221.

and with this distribution of functions shall discharge them as one Government. It is highly desirable that the executive should cultivate the habit of associated deliberation and essential that it should present a united front to the outside. We would therefore suggest that, as a general rule, it should deliberate as a whole, but there must certainly be occasions upon which the Governor will prefer to discuss a particular question with that part of his Government, directly responsible. It would therefore rest with him to decide whether to call a meeting of his whole Government, or of either part of it, though he would doubtless pay special attention to the advice of the particular member or minister in charge of the subjects under discussion. The actual decision on a transferred subject would be taken, after general discussion, by the Governor and his ministers; the action to be taken on a reserved subject would be taken, after similar discussion, by the Governor and the members of his Executive Council.'

Next, the Joint Select Committee gave a picture of the manner in which it thought that the Government of a province should be worked under the Reforms. 'There will be,' it said,[1] 'many matters of administrative business, as in all countries, which can be disposed of departmentally. But there will remain a large category of business, of the character which would naturally be the subject of Cabinet consultation. In regard to this category the Committee conceive that the habit should be carefully fostered of joint deliberation between the members of the executive council and the ministers, sitting under the chairmanship of the Governor. There cannot be too much mutual advice and consultation on such subjects; but the Committee attach

[1] The Joint Select Committee's Report on Clause 6 of the Government of India Bill, 1919.

the highest importance to the principle that, when once opinions have been freely exchanged and the last word has been said, there ought then to be no doubt whatever as to where the responsibility for the decision lies. Therefore, in the opinion of the Committee, after such consultation, and when it is clear that the decision lies within the jurisdiction of one or other half of the Government, that decision in respect of a reserved subject should be recorded separately by the executive council, and in respect of a transferred subject by the ministers, and all acts and proceedings of the Government should state in definite terms on whom the responsibility for the decision rests. It will not always, however, be clear, otherwise than in a purely departmental and technical fashion, with whom the jurisdiction lies in the case of questions of common interest. In such cases it will be inevitable for the Governor to occupy the position of informal arbitrator between the two parts of his administration; and it will equally be his duty to see that a decision arrived at on one side of his Government is followed by such consequential action on the other side as may be necessary to make the policy effective and homogeneous.

'In the debates of the legislative council members of the executive council should act together and ministers should act together, but members of the executive council and ministers should not oppose each other by speech or vote; members of the executive council should not be required to support either by speech or vote proposals of ministers of which they do not approve, nor should ministers be required to support by speech or vote proposals of the executive council of which they do not approve; they should be free to speak and vote for each other's proposals when they are in agreement with them. All other official members of the legislative council should be free to speak and vote as they choose.'

Again:—

'. . . . They (i.e., the Committee) wish to place in the forefront of the Report their opinion that they see no reason why the relations (between the two parts of the provincial government) should not be harmonious and mutually advantageous. They regard it as of the highest importance that the Governor should foster the habit of free consultation between both halves of his government, and indeed that he should insist upon it in all important matters of common interest. He will thus ensure that ministers will contribute their knowledge of the people's wishes and susceptibilities, and the members of his Executive Council their administrative experience, to the joint wisdom of the government. But while the Committee anticipate much advantage from amicable and, as far as possible, spontaneous association for purposes of deliberation, they would not allow it to confuse the duties or obscure the separate responsibility which will rest on the two parts of the administration. Each side of the government will advise and assist the other; neither will control or impede the other. The responsibility for administrative and legislative action in their own field will be fixed beyond possibility of doubt on ministers and on the majorities of the provincial legislatures which support them; and they will be given adequate power to fulfil their charge. Similarly, within that field for which he remains accountable to Parliament, the responsibility for action must be fixed on the Governor in Council, and he must possess unfailing means for the discharge of his duties. Finally, behind the provincial authorities stands the Government of India.[1] '

We may also note here the observations of the

[1] The Joint Select Committee's Report, para. 5.

Committee [1] on the position of the Governor in the Government of his province :—

Position of the Governor in the Government of his province.

'The position of the Governor will . . . be one of great responsibility and difficulty, and also of great opportunity and honour. He may have to hold the balance between divergent policies and different ideals, and to prevent discord and friction. It will also be for him to help with sympathy and courage the popular side of his Government in their new responsibilities. He should never hesitate to point out to ministers what he thinks is the right course or to warn them if he thinks they are taking the wrong course. But if, after hearing all the arguments, ministers should decide not to adopt his advice, then in the opinion of the Committee, the Governor should ordinarily allow ministers to have their way, fixing the responsibility upon them, even if it may subsequently be necessary for him to veto any particular piece of legislation. It is not possible but that in India, as in all other countries, mistakes will be made by ministers, acting with the approval of a majority of the legislative council, but there is no way of learning except through experience and by the realization of responsibility.'

Again, the Royal Instructions [2] to the Governor lay down :—

'Inasmuch as certain matters have been reserved for the administration according to law of the Governor in Council in respect of which the authority of our Governor-General in Council shall remain unimpaired, while certain other matters have been transferred to the administration of the Governor acting with a Minister, it will be for you so to regulate the business of the Government of the province that, so far as may be possible, the responsibility

[1] The Joint Select Committee's Report on Clause 6, G. I. Bill, 1919.
[2] See Appendix M.

for each of these respective classes of matters may be kept clear and distinct.

'Nevertheless, you shall encourage the habit of joint deliberation between yourself, your Councillors and your Ministers, in order that the experience of your official advisers may be at the disposal of your Ministers, and that the knowledge of your Ministers as to the wishes of the people may be at the disposal of your Councillors.'

Matters affecting both Reserved and Transferred subjects.

Finally, in order as it were to give to some of the proposals quoted above the force of law, it has been laid down in Devolution Rule 9[1] that, if a matter appears to the Governor to affect substantially the administration both of a Reserved and of a Transferred subject, and there is disagreement between the member of the Executive Council and the Minister concerned as to the action to be taken, it shall be the duty of the Governor, after due consideration of the advice tendered to him, to direct in which department the decision as to such action is to be given. If, however, there is such a difference of opinion on an important matter, it must, in so far as circumstances admit, be considered by the Governor with his Executive Council and his Ministers together, before any such direction is given. Further, in giving his direction, the Governor may, if he thinks fit, indicate the nature of the action which should in his judgment be taken. But the final decision must be arrived at by the Governor in Council or by the Governor and Minister or [2]

[1] See Appendix B.

[2] Commenting on this Rule, the Joint Select Committee stated :—

'The rule (9) as drafted by the Government of India correctly recognizes the corporate responsibility of Ministers and of the Executive Councillors for the purposes of discussion, but the Committee think it important that when the decision is left to the Ministerial portion of the Government the corporate responsibility of Ministers should not be obscured. They do not intend to imply that, in their opinion, in every case in which an order is passed in a transferred department the order should receive the approval of all the ministers; such a

Ministers, according as the department to which it has been committed is a department dealing with Reserved or a department dealing with Transferred subjects.

Allocation of revenues for the administration of Transferred subjects.

On the more difficult question of the distribution of the provincial revenues and balances between the two sides of the provincial Governments, the Joint Select Committee made the following instructive observations [1] :—

'They are confident that the problem can readily be solved by the simple process of common sense and reasonable give-and-take, but they are aware that this question might, in certain circumstances, become the cause of much friction in the provincial government, and they are of opinion that the rules governing the allocation of these revenues and balances should be framed so as to make the existence of such friction impossible. They advise that, if the Governor, in the course of preparing either his first or any subsequent budget, finds that there is likely to be a serious or protracted difference of opinion between the executive council and his ministers on this subject, he should be empowered at once to make an allocation of revenue and balances between the reserved and transferred subjects, which should continue for at least the whole life of the existing legislative council. The Committee do not endorse the suggestion that certain sources of revenue should be allocated to reserved, and certain sources to transferred subjects, but they recommend that the Governor should allocate a definite proportion of the revenue, say, by

procedure would obviously militate against the expeditious disposal of business, and against the accepted canons of departmental responsibility. But in cases which are of sufficient importance to have called for discussion by the whole Government, they are clearly of opinion that the final decision should be that of one or other portion of the Government as a whole.'—Second Report on the Government of India Act, 1919 (Draft Rules).

[1] The Joint Select Committee's Report on Clause 1 of the Government of India Bill, 1919.

way of illustration, two-thirds to reserved and one-third to transferred subjects, and similarly a proportion, though not necessarily the same fraction, of the balances. If the Governor desires assistance in making the allocation, he should be allowed at his discretion to refer the question to be decided to such authority as the Governor-General shall appoint. Further, the Committee are of opinion that it should be laid down from the first that, until an agreement which both sides of the Government will equally support, has been reached, or until an allocation has been made by the Governor, the total provisions of the different expenditure heads in the budget of the province for the preceding financial year shall hold good.

'The Committee desire that the relation of the two sides of the Government in this matter, as in all others, should be of such mutual sympathy that each will be able to assist and influence for the common good the work of the other, but not to exercise control over it. The budget should not be capable of being used as a means for enabling ministers or a majority of the legislative council to direct the policy of reserved subjects; but on the other hand the executive council should be helpful to ministers in their desire to develop the departments entrusted to their care. On the Governor personally will devolve the task of holding the balance between the legitimate needs of both sets of his advisers.'

In accordance with these proposals of the Joint Select Committee, it has been laid down in the Devolution Rules [1] (31–35) that the expenditure for the administration of both Reserved and Transferred subjects must, in the first instance, be a charge on the general revenues and balances of each province, and the framing of proposals for the apportionment of funds between Transferred and Reserved

[1] See Appendix B.

departments, respectively, whether at the time of the preparation of the Budget or at any other time, will be a matter for agreement between the two sides of the provincial Government. If, however, at the time of any such apportionment of funds the Governor is satisfied that there is no hope of agreement between them within a reasonable time, 'he may, by order in writing, allocate the revenues and balances of the province between Reserved and Transferred subjects, by specifying the fractional proportions of the revenues and balances which shall be assigned to each class of subjects.'

Any such order of allocation 'may be made by the Governor, either in accordance with his own discretion, or in accordance with the report of an authority to be appointed by the Governor-General in this behalf on the application of the Governor.'

Every such order must '(unless it is sooner revoked) remain in force for a period to be specified in the order, which must not be less than the duration of the then existing Legislative Council,' and must not exceed its duration by more than a year :

'Provided that the Governor may at any time, if his Executive Council and ministers so desire, revoke an order of allocation or make such other allocation as has been agreed upon by them :

'Provided, further, that if the order which it is proposed to revoke was passed in accordance with the report of an authority appointed by the Governor-General, the Governor must obtain the consent of the Governor-General before revoking the same.'

Every such order of allocation must provide that, 'if any increase of revenue accrues during the period of the order on account of the imposition of fresh taxation, that increase, unless the Legislature otherwise directs, must be allocated in aid of that part of the Government by which the taxation is initiated.'

Finally, if at the time of the preparation of any budget no agreement or allocation 'has been arrived at, the budget shall be prepared on the basis of the aggregate grants, respectively provided for the Reserved and Transferred subjects in the budget of the year about to expire.'

Regulation of the exercise of authority over the members of the public services.

The authority vested in the local Government over officers of the public services employed in a Governor's province is exercised, in the case of officers serving in a department dealing with Reserved subjects, by the Governor in Council, and, in the case of officers serving in a department dealing with Transferred subjects, by the Governor acting with the Minister in charge of the department.[1] But no order affecting emoluments or pensions, no order of formal censure, and no order on a memorial can be passed to the disadvantage of an officer of an all-India or provincial service without the personal concurrence of the Governor; nor can an order for the posting of an officer of an all-India service be made without the personal concurrence of the Governor.[2] Though these privileges are equally enjoyed by the members of the public services serving under both the sides of the provincial Government, their existence has made the position of Ministers specially difficult. The latter, unlike the members of the Executive Council, are held accountable to the Legislative Council for the administration of the subjects committed to their charge; but their powers over

[1] Devolution Rule 10; see Appendix B.

[2] *Ibid.*

This Rule has been made obviously on the advice of the Joint Select Committee which stated in its Report as follows:—

'In the provinces, officers serving in a reserved department will be controlled by the Governor in Council, and in a transferred department by the Governor acting with ministers, but in both cases alike the personal concurrence of the Governor should be regarded as essential in the case of all orders of any importance prejudicially affecting the position or prospects of officers appointed by the Secretary of State.'—Report on Clause 36, G. I. Bill, 1919.

officers acting under them are so circumscribed that they cannot, of their own authority, take even the most ordinary disciplinary action against any of them, if ever they consider it necessary. They have to seek the aid of the Governor before an undesirable subordinate can be simply transferred from one place to another. This limitation on the powers of Ministers in relation to their subordinates has largely contributed in some provinces to the unpopularity of the dyarchical [1] system of Government.

If an officer performs duties both in relation to Reserved and Transferred subjects, the Governor will decide in which department he is to be deemed to be serving.

A local Government must employ such number of officers of the Indian Medical Service in such appointments and on such terms and conditions as may be prescribed by the Secretary of State in Council.

The Governor-General in Council may declare that any road or other means of communication is of military importance, and prescibe in respect of it the conditions subject to which it should be constructed or maintained, including the amount of expenditure to be incurred from time to time upon such construction and maintenance by the Governor-General in Council and by the local Government respectively.[2]

Provincial Finance Department and its functions.

There is in each Governor's province a Finance Department controlled by a member of the Executive Council.[3] Immediately subordinate to the member there is a Financial Secretary.

If the Ministers so desire, the Governor must, after consultation with them, appoint a Financial Adviser whose duty will be to assist them in the preparation of proposals for expenditure, and generally to advise them

[1] See chap. xxv *post*.
[2] Devolution Rule 12a.
[3] *Ibid.*, 36 (1).

in regard to matters relating to finance.[1] The Finance Department may delegate to the Financial Adviser all or any of its functions.[2]

The functions of the Finance Department are as follows [3] :—

(1) It is in charge of the account relating to loans granted by the local Government, and advises on the financial aspect of all transactions relating to such loans ;

(2) it is responsible for the safety and proper employment of the famine relief fund;

(3) it examines and reports on all proposals for the increase or reduction of taxation ;

(4) it examines and reports on all proposals for borrowing by the local Government, takes all necessary steps for raising such loans as have been duly authorized and is in charge of all matters relating to the service of loans ;

(5) it is responsible for seeing that proper financial rules are framed for the guidance of other departments, and that suitable accounts are maintained by those departments and establishments subordinate to them ;

(6) it prepares an estimate of the total receipts and disbursements of the province in each year, and is responsible during the year for watching the state of the balances of the local Government;

(7) in connection with the budget and the supplementary estimates—

(*a*) it prepares the statement of estimated revenue and expenditure which is placed before the Legislative Council every year and any supplementary estimates or demands for excess grants which may be submitted to the vote of the Council;

[1] Devolution Rule 36 (2). [2] *Ibid.*, 36 (3). [3] *Ibid.*, 37.

(*b*) it obtains, for the purpose of such preparation, materials from the different departments of the Government on which its estimates are to be based, and is responsible for the correctness of those estimates ;

(*c*) it examines and advises on all schemes of new expenditure for which it is proposed to make provision in the estimates, and must refuse to provide in the estimates for any scheme which has not been so examined ;

(8) on receipt of a report from an audit officer to the effect that expenditure for which there is no sufficient sanction is being incurred, it requires steps to be taken to obtain sanction, or sees that the expenditure immediately ceases ;

(9) it lays the audit and appropriation reports before the Committee on Public Accounts and brings to its notice 'all expenditure which has not been duly authorized and any financial irregularities' ; and

(10) it advises departments responsible for the collection of revenue regarding the progress of collection and the methods of collection employed.

Besides, after grants[1] have been voted by the Legislative Council, the Finance Department has power to sanction any reappropriation within a grant from one major, minor or subordinate head to another. The Member or Minister in charge of a department, on the other hand, can authorize reappropriation only within very narrow limits. It must be within a grant between heads subordinate to a minor head and must not 'involve undertaking a recurring liability.'

No expenditure[2] on any of the non-votable heads of provincial expenditure, in excess of the estimate

[1] Devolution Rule 38. [2] *Ibid.*, 39.

for that head shown in the budget of the year, can be incurred without previous consultation with the Finance Department. No office [1] may be added to, or withdrawn from, the public service in the province, and the emoluments of no post may be varied, except after consultation with the Finance Department. Nor can any allowance or special or personal pay be sanctioned for any post or class of posts or any Government servant without such previous consultation.[2]

Again, the department[3] must be consulted before any grant of land or assignment of land revenue can be made. But it need not be consulted when the grant is made under the ordinary revenue rules of the province. It must also be consulted before any concession, grant or lease of mineral or forest rights, or right to water power can be given to anybody. No proposal involving an abandonment of revenue for which credit has been taken in the budget, or involving expenditure for which no provision has been made in the budget, can be submitted [4] to the local Government or to the Legislative Council without a previous reference to the Finance Department.

It has been laid down, however, that wherever previous consultation with the Finance Department is required, it is open to that department to prescribe, by general or special orders, cases in which its assent may be presumed to have been given.[5]

It may no doubt surprise many that the Finance Department should have so much power and that the other departments of the Government should be so helplessly dependent on it. But it must be borne in mind that it is this department which is primarily responsible for finding money for them and also for the protection of public revenues against that

[1] Devolution Rule 40. [2] *Ibid.*, 41.
[3] *Ibid.*, 42. [4] *Ibid.*, 43. [5] *Ibid.*, 45.

extravagance to which most of the spending departments of every Government are more or less prone. The powers of the Finance Department will be very little affected when complete provincial autonomy will be granted. Because of the peculiar nature of its duties, this department is seldom popular in any country. Speaking of the Treasury in England, President Lowell [1] says, 'There is indeed one department which is continually brought into contact—one might almost say conflict—with all the others; that is the Treasury. Any vigorous branch of the public service always sees excellent reasons for increasing its expenditure, and proposes to do so without much regard for the needs of the other branches; while the Chancellor of the Exchequer, who is obliged to find the money, must strive to restrict the aggregate outlay. If he did not, the expenditure of the government would certainly be extravagant. . . . Being placed in such a relation to his colleagues, it is not unnatural that the Chancellor of the Exchequer should often differ with them. As Gladstone notes in his diary in 1864, "Estimates always settled at the dagger's point."'

We propose to deal in a subsequent chapter with the complaint that is often made that the Finance Department, being under an Executive Councillor, favours the Reserved departments of the provincial Government at the cost of the Transferred departments.

Agency employment of local Governments.

Under Devolution Rule 46, the Governor-General in Council may use the agency of the Governor in Council of any province in the administration of central subjects in so far as such agency may be found convenient. The cost of an establishment exclusively employed on the business of agency must be borne by the central Government. If, however, a joint establishment is employed upon the administration of

[1] *The Government of England*, vol. i, pp. 75–76.

central and provincial subjects, the cost of such establishment may be distributed in such manner as the Governor-General in Council and the Governor in Council concerned may agree, or, in the case of disagreement, in such manner as may be prescribed by the Secretary of State in Council. If, in respect of a central subject, powers have been conferred by or under any law upon a Local Government, such powers must be exercised by the Governor in Council.[1]

Classification of the functions of Government, how made.

One of the chief merits of the Government of India Act of 1919 is its elasticity. The Act has simply outlined the main features of the constitutional changes introduced by it, but has left those changes to be worked out in detail in the form of Rules.[2] Considerable alteration in the existing structure of our Government may be effected, if necessary, by Rules framed under the Act, without necessitating any Parliamentary enactment. The Rules can be made, except where otherwise stated in the Act, by the Governor-General in Council with the sanction of the Secretary of State in Council; but they must be approved by both Houses of Parliament.[3] The classification of the functions of Government into 'central' and 'provincial', and the division, again, of the provincial subjects into 'Reserved' and 'Transferred', have been made by such Rules under Section 45A of the Government of India Act (i.e., Section 1 of the Act of 1919).[4] And further transfers to the list of Transferred subjects of subjects which now belong to the Reserved list in any province can be made by similar Rules.[5]

How further transfers can take place.

[1] Devolution Rule 46A.

[2] See Memo. by Mr. Montagu about the Government of India Bill 1919; Cmd., 175, p. 1.

[3] See pp. 1-2 *ante*.

[4] See Devolution Rules 3 and 6.—App. B.

[5] We may draw in this connection the attention of the reader to a very interesting debate in the Bengal Legislative Council on a resolution moved by Dr. Pramathanath Banerji, for the amendment

On the other hand, the Governor-General in Council may, by notification in *The Gazette of India*, with the previous sanction of the Secretary of State in Council, revoke or suspend for such period as he may think necessary the transfer of all or any provincial subjects in any province, and upon such revocation or during such suspension the subjects must cease to be Transferred subjects.[1]

Revocation or suspension of transfer.

A new Governor's province may be constituted under the Government of India Act, if necessary. Under Section 52A (1) of the Act, the Governor-General in Council may, after obtaining an expression of opinion from the local Government and the local legislature affected, by notification, with the approval of the Crown previously signified by the Secretary of State in Council, constitute[2] a new Governor's province, or place part of a Governor's province under a Deputy-Governor to be appointed by the Governor-General, and may in such case apply, with such modifications as appear necessary or desirable, all or any of the provisions of the Act 'relating to Governors' provinces, or provinces under a Lieutenant-Governor or Chief Commissioner, to any such new province or part of a province'.

Constitution of a new Governor's province.

The Governor-General in Council may also declare, under Section 52A (2) of the Act, any territory in British India to be a 'backward tract', and may, by notification, with such sanction as in the preceding case, direct that the Act will apply to that territory, subject to such exceptions and modifications

Provision as to backward tracts.

of Rule 6 and Schedule II of the Devolution Rules. The debate took place on February 19, 1924.—See *Bengal Legislative Council Proceedings*, February 18 to 20, 1924, vol. xiv, No. 2, pp. 96–125.

[1] Devolution Rule 6.

[2] The Province of Burma was constituted a Governor's province under this Section. See page 54*n*.—*Vide The Government of India Act* (published by the Government of India), pp. 251–52.

as may be prescribed in the notification. He may further direct that any Act of the Indian Legislature will not apply to that territory or any part thereof, or will apply to it or to any part of it, subject to such exceptions or modifications as the Governor-General thinks fit, or may authorize the Governor in Council concerned to give similar directions as regards any Act of the local legislature.

It may be noted here that, so far as Bengal is concerned, this Section has been applied to the Hill Tracts of Chittagong and the Darjeeling District.[1]

Lieutenant-Governorships.

Before we conclude this chapter we may say a word or two about Lieutenant-Governorships and other provinces. The Governor-General in Council may, with the sanction of the Crown previously signified by the Secretary of State in Council, constitute a new province under a Lieutenant-Governor.[2] He may also, with the approval of the Secretary of State in Council, create a Council in any province under a Lieutenant-Governor, for the purpose of assisting the latter in the executive government of the province.[3] He is to determine the exact number of the members of such a Council within the maximum of four and the qualifications to be required of them.[4] He is also empowered to make provision for the procedure to be adopted at a meeting of a Lieutenant-Governor's Executive Council.[5]

As has been seen before, the power of appointing Lieutenant-Governors or the members of their Executive Councils is vested in the Governor-General, subject to the approval of the Crown. At present there is no province in British India under a Lieutenant-Governor.

[1] See Notification No. 2-G, Delhi, January 3, 1921. *Vide The Bengal Legislative Council Manual*, 1921, p. 222.

[2] Section 53 (2) of the Act.

[3] Section 55 (1) of the Act. The action of the Governor-General in Council in this respect has to be later on approved by both Houses of Parliament. [4] *Ibid.* [5] *Ibid.*

The Governor-General in Council is also empowered to take, with the sanction of the Secretary of State, any part of British India under his immediate authority and management, and thereupon to give all necessary orders and directions respecting its administration, by placing it under a Chief Commissioner or by otherwise providing for its administration.[1]

Chief Commissionerships

The following provinces[2] are now administered by Chief Commissioners, who are appointed by the Governor-General in Council, namely :—

The North-West Frontier Province, British Baluchistan, Delhi, Ajmer-Merwara, Coorg, the Andaman and Nicobar Islands and the Pargana of Manpur.[3]

The Chief Commissionerships are 'under the immediate authority and management of the Governor-General in Council, who is competent to give all necessary orders and directions' respecting their administration.[4] The Chief Commissioners of British Baluchistan and the North-West Frontier Province are at the same time Agents to the Governor-General 'for dealing with tribes and territories outside British India.'[5] The Agent to the Governor-General in Rajputana and the Resident in Mysore are *ex officio* the Chief Commissioners of Ajmer-Merwara and Coorg respectively, and the Superintendent of the Penal Settlement of Port Blair is the Chief Commissioner of the Andaman and Nicober Islands.[6] The Agent to the Governor-General in Central India is the Chief Commissioner of the Pargana of Manpur. Coorg, Delhi and the Andamans are under the Home Department of the Government of India,[7] while the other Chief Commissionerships,

[1] Section 59 of the Act. [2] Section 58 of the Act.
[3] See page 55 *ante* ; also *The Government of India Act* (published by the Government of India), p. 253.
[4] *Imperial Gazetteer of India*, vol. iv, p. 32.
[5] *The Fifth Decennial Report*, p. 56. [6] *Ibid.*
[7] The Joint Report, para. 44.

as has been seen before, are administered through its Foreign and Political Department.

Legislative Councils in Lieutenant-Governors' and Chief Commissioners' provinces, how constituted.

Under the Act, a Legislative Council may be constituted in any Lieutenant-Governorship or Chief Commissionership by the Governor-General in Council with the sanction of the Crown previously signified by the Secretary of State in Council,[1] and also Rules may be made in the usual way,[2] subject to the final approval of Parliament, providing for the constitution of such a Council.[3] But it is distinctly laid down[4] in the Act that the number of members nominated or elected to the Legislative Council of a Lieutenant-Governor must not exceed one hundred, and that at least one-third of the persons nominated or elected to the Legislative Council of a Lieutenant-Governor or Chief Commissioner must be non-officials.

Their functions.

The functions[5] of the Legislative Council of a Lieutenant-Governor's or Chief Commissioner's province must ordinarily be restricted to legislation and to the alteration of the Rules for the conduct of business in the Council. But the local Government may, with the sanction of the Governor-General in Council, make Rules providing for the discussion by the Council of the annual financial statement of the Government and of any matter of general public interest, and for the asking of questions, under such conditions and restrictions as may be prescribed in the Rules. Such Rules must be laid before both Houses of Parliament as soon as may be after they are made, and must not be subject to repeal or alteration by the Indian Legislature or by the local Legislature.

Except Coorg none of the Chief Commissionerships have any Legislative Council at present.

[1] Sec. 77 of the Act. [2] See page 2 *ante*. [3] Sec. 76 of the Act.
[4] *Ibid.* [5] Sec. 80 of the Act.

CHAPTER XXII

THE PUBLIC SERVICES[1] IN INDIA

The Joint Report and the civil services in India—The civil services and their rights and privileges—The Joint Select Committee on the civil services—Public Service Commission—The Lee Commission on the Public Service Commission—Financial Control—The Indian Civil Service—Rules for admission to the Indian Civil Service—Indians in the Indian Civil Service—Provincial and Subordinate Services.

The Joint Report and the civil services in India.

We propose to deal in this chapter with the present constitutional position of the civil services in India. Before the Reforms the regulation of the services was 'to a great extent uncodified or codified only by executive orders. The duty of obedience by the subordinate officer and of protection by the superior officer was unwritten law.'[2] The authors of the Joint Report proposed[3] that any public servant, whatever the Government under which he might be employed, should be properly supported and protected in the legitimate exercise of his functions; and that any rights and privileges guaranteed or implied in the conditions of his appointment should be secured to him. No changes that would occur should be allowed to impair the power of the Government of India or of the Governor in Council to secure these essential requirements. In pursuance of these proposals, the Government of India recommended that the main rights and duties of the services in India should be reduced to statutory form, in so far as they were

[1] See in this connection paras. 313–27 of the Joint Report.

[2] Para. 44 of the Government of India's *First Despatch on Indian Constitutional Reforms*, dated March 5th, 1919.

[3] Para. 325 of the Joint Report.

not already prescribed by law or rule.[1] Section 96B of the Government of India Act has made provision to this effect.

The civil services and their rights and privileges.

The Secretary of State in Council has been empowered by this Section to make, with the concurrence of the majority of votes at a meeting of his Council, Rules[2] 'for regulating the classification of the civil services in India, the methods of their recruitment, their conditions of service, pay and allowances, and discipline and conduct.'[3] He may by such Rules delegate, to such extent and in respect of such matters as he may prescribe, the power of making Rules to the Government of India or to local Governments, or authorize the Indian Legislature or local Legislatures

[1] See para. 44 of the *First Despatch on Indian Constitutional Reforms*; also Mr. Montagu's Memorandum, Part iv.

[2] See for such Rules pp. 85–90 of *Report of the Royal Commission on the Superior Civil Services in India*, 1924.

[3] For instance, under the existing Rules, 'a local Government may, for good and sufficient reasons—
(1) censure,
(2) reduce to a lower post,
(3) withhold promotion from, or
(4) suspend from his office,
any officer of an all-India Service;
Provided that no head of a department appointed with the approval of the Governor-General in Council shall be reduced to any lower post without the sanction of the Governor-General in Council'.—See *ibid.*, p. 86.

Similarly, subject to the provisions of any law for the time being in force, 'a local Government may, for good and sufficient reasons—
(1) censure,
(2) withhold promotion from,
(3) reduce to a lower post,
(4) suspend,
(5) remove, or
(6) dismiss,
any officer holding a post in a provincial or subordinate service or a special appointment.' *Ibid.*, p. 87. (*See also App.* T, *Part III*).

It is provided, however, that every order of dismissal, removal or reduction must, except when it is based on facts or conclusions established at a judicial trial, or when the officer concerned has absconded, be preceded by a properly recorded departmental enquiry. For further details, see *ibid.*, page 87; also *The Government of India Act* (published by the Government of India), pp. 229–41.

to make laws regulating the public services. But a person appointed by him to the civil service of the Crown in India before the Act of 1919 came into operation will retain under it all his pre-existing or 'accruing [1] rights.'[2]

The right to pensions and the scale and conditions of pensions of all persons appointed by the Secretary of State in Council to the civil service of the Crown in India are to be regulated in accordance with the Rules which were in force

[1] The expression 'accruing rights' has given rise to a considerable amount of controversy. According to the Law Officers of the Crown, the expression means 'all rights to which members of the Civil Services are entitled, whether by statute, or by rule having statutory force, or by regulation in force at the time of their entry into service. They do not, however, include prospects of promotion, except in cases where the promotion is no more than advancement by seniority to increased pay, as in the case of the various appointments borne upon the ordinary lists of time-scales of pay. In particular, they do not apply to general expectations of possible appointment to offices, such as those of Commissioner of a Division, which are not included in the ordinary time-scale lists, and the filling of which involves selection by merit . . . The abolition of such appointments would give rise to no claims to compensation except to persons who were actually holding them at the time of their abolition . . . No method of filling such appointments which is not inconsistent with the Statute, even though it reduced the expectations of members of a particular service, would give rise to any claim to compensation on the part of any person whose actual tenure of an appointment was not thereby affected. . . . '—*The Despatch of the Secretary of State*, dated April 26, 1923; see para 81 of the Lee Commission's Report.

The civil services, on the other hand, 'claim that whatever may be the legal interpretation of the words "existing or accruing rights", the intention of the proviso was to secure to them their prospects of promotion to all higher posts existing at the time the Act was passed, or alternatively to secure for them compensation for the loss of such prospects through the abolition of these appointments'.—Para. 82 of the Lee Commission's Report.

Commenting on this attitude of the services, Sir Tej Bahadur Sapru rightly says, '. . . . The claim of the services seems to be hardly reasonable. For, if that were well-founded, no single higher post existing at the time the Act was passed could be abolished however strong the justification for such abolition might be; and that would be scarcely consistent with an intention to give real Responsible Government'.—*The Indian Constitution, A Note on its Working*, p. 116; published at Adyar, Madras.

See in this connection also Section 144 of South Africa Act, 1909.

[2] Or he will receive such compensation for the loss of any of them as the Secretary of State in Council may consider just and equitable.

at the time of the passing of the Act of 1919. Any such Rules may be amended by the Secretary of State in Council with the concurrence of the majority of votes at a meeting of his Council; but no such amendment can adversely affect the pension of any member of the service appointed before the date of the amendment[1]. For the removal of all doubts, it has further been provided in the Government of India Act that all Rules or other provisions relating to the civil service of the Crown in India, which were in force at the time of the passing of the Act of 1919, will continue to remain in force under the Reforms until they are revoked or amended by Rules or laws made under the Act.

Subject to the provisions of the Government of India Act and of the Rules made thereunder, every person in the civil service of the Crown in India holds office during the pleasure[2] of the Crown, and may be employed in any manner by any proper authority within the scope of his duty. But no person in that service may be dismissed by any authority subordinate to that by which he was appointed.[3] The Secretary of State in Council may, except in so far as he has otherwise provided by Rules, reinstate in that service any person who has been dismissed. Again, it is provided in the Act[4] that 'if any person appointed by the Secretary of State in Council thinks himself wronged by an order of an official superior in a Governor's province, and on due application made to that superior does not receive the redress to which he may consider himself entitled, he may, without prejudice to any other right of redress, complain to the Governor of the province in order to obtain justice.' And the Governor is directed by the Act 'to examine such complaint and require such action to be taken thereon as may appear to him to be just

[1] Section 96B (3) of the Act.
[2] But in practice, during good behaviour.
[3] Section 96B (1) of the Act. [4] *Ibid*

and equitable.' As has been stated before, the Royal Instructions to the Governor also require him to safeguard all members of the public services employed in his province in the legitimate exercise of their functions, and in the enjoyment of all recognized rights and privileges, and to see that his Government orders all things justly and reasonably in their regard.

The Joint Select Committee on the civil services.

All these safeguards have been provided for on the advice of the Joint Select Committee. Discussing the 'position of the public services in working the new constitutions in the provinces', the Committee stated[1] :—

'They are of opinion that these services have deserved the admiration and gratitude of the whole Empire. They know that some members of the services regard the wisdom of the proposed changes with grave misgiving, and that some fear that those changes will not tend to the welfare of the Indian masses. They are convinced, however, that the services will accept the changing conditions and the inevitable alteration in their own position, and devote themselves in all loyalty to making a success, so far as in them lies, of the new constitution.

'In the provinces, officers serving in a reserved department will be controlled by the Governor in Council, and in a transferred department by the Governor acting with ministers, but in both cases alike the personal concurrence of the Governor should be regarded as essential in the case of all orders of any importance prejudicially affecting the position or prospects of officers appointed by the Secretary of State.

'The Committee think that every precaution should be taken to secure to the public servants the career in life to

[1] Part IV of the Joint Select Committee's Report. See in this connection para. 325 of the Joint Report; also paras. 43–54 of the Government of India's *First Despatch on Indian Constitutional Reforms*.

which they looked forward when they were recruited, and they have introduced fresh provisions into this clause to that end. If friction occurs, a readjustment of persons and places may often get over the difficulty, and the Governor must always regard it as one of his most important duties to establish a complete understanding between his ministers and the officers through whom they will have to work. But if there are members of the service whose doubts as to the changes to be made are so deeply-rooted that they feel they cannot usefully endeavour to take part in them, then the Committee think it would only be fair to those officers that they should be offered an equivalent career elsewhere, if it is in the power of His Majesty's Government to do so, or, in the last resort, that they should be allowed to retire on such pension as the Secretary of State in Council may consider suitable to their period of service.'

Public Service Commission.

Provision[1] has been made in the Act for the establishment of a Public Service Commission in India. The Commission is to be appointed[2] by the Secretary of State in Council and is to consist of not more than five members, of whom one must be Chairman.[3] Each member will hold office for five years, and may be reappointed. No member can be removed before the expiry of his term of office, except by an order

[1] 96 C. of the Act.

[2] An officiating appointment may be made in the place of any member absent on leave or special duty.—Government of India, Home Department Notification No. F.—254/25, dated Simla, May 27, 1926.

[3] The first Public Service Commission, consisting of the following members, was appointed in 1926 :—

Mr. W. R. Barker, C. B. (Chairman).
Mr. A. H. Ley, C.S.I., C.I.E., C.B.E., I.C.S.
Sayed Raza Ali, C. B. E.
Sir Philip Joseph Hartog, C.I.E., D.L.
Diwan Bahadur Sir T. Vijayaraghava Acharya, K. B. E. *Vide* Government of India, Home Department Notification No. F.—178/14/1/24, dated May 27, 1926. The last four members have been appointed with effect from the 1st of October, 1926. *Ibid.*

Mr. J.H. Wise, I.C.S., was appointed Secretary of the Commission.

of the Secretary of State in Council. The qualifications[1] for appointment, and the pay and pension (if any) attaching to the offices of Chairman and member are to be prescribed by rules[2] made by the Secretary of State in Council with the concurrence of the majority of votes at a meeting of his Council. The Commission will discharge, in regard to recruitment and control of the public services in India, such functions[3] as may be assigned to it by rules made by the Secretary of State in Council in the same way as in the preceding cases.

This provision for the appointment of a Public Service Commission has been made on the advice of the Government of India. It stated in its first Despatch[4] on Indian Constitutional Reforms as follows:—

'In most of the Dominions[5] where responsible govern-

[1] At least two of the members must be persons who have been for at least ten years in the service of the Crown in India.—*Ibid.*

[2] Under the rules now in force the Chairman must receive a pay of five thousand rupees per month, and each of the other members a pay of three thousand five hundred rupees per month. The Chairman cannot, on vacating his office, hold any other post under the Crown in India. No pension attaches to the office of member (including the Chairman) as such, but in the case of a member who at the time of his appointment was in the service of the Crown in India, his service as member must count for pension under the rules applicable to the service to which such member belongs.

A sum of £500 is 'payable for the expenses of equipment and voyage to a member who at the time of his first appointment is domiciled and permanently resident elsewhere than in Asia and is not in the service of the Crown in India. Again, a member who is, and was at the time of his first appointment, domiciled elsewhere than in Asia, may, on re-appointment for a further term of office as a member, be granted such passage allowances for himself and his family as the Secretary of State for India in Council may prescribe'.—*Vide* the Government of India, Home Department Notification No. F.—254/25, dated May 27, 1926.

For the leave and travelling allowances of members see *ibid.*

[3] For the present functions of the Commission, see the Public Service Commission (Functions) Rules, 1926, in Appendix T, pages 601–609 *post.*

[4] Para. 55 of the Despatch.

[5] See in this connection Prof. Keith's *Responsible Government in the Dominions*, vol. i, pp. 344–53; see also Sections 141 and 142 of South Africa Act, 1909.

ment has been established, the need has been felt of protecting the public service from political influences by the establishment of some permanent office peculiarly charged with the regulation of service matters. We are not prepared at present to develop the case fully for the establishment in India of a public service commission : but we feel that the prospect that the services may come more and more under ministerial control does afford strong grounds for instituting such a body. Accordingly, we think that provision should be made for its institution in the new Bill. The Commission should be appointed by the Secretary of State, and its powers and duties regulated by statutory rules to be framed by the same authority. . . .'

The Lee Commission on the Public Service Commission.

We may note in this connection the following interesting observations [1] made by the Royal Commission on the Superior Civil Services in India, popularly known as the Lee [2] Commission, on the question of the Public Service Commission :—

'Wherever democratic institutions exist, experience has shown that to secure an efficient Civil Service it is essential to protect it so far as possible from political or personal influences and to give it that position of stability and security which is vital to its successful working as the impartial and efficient instrument by which Governments, of whatever political complexion, may give effect to their policies. In countries where this principle has been neglected, and where the 'spoils system' has taken its place, an inefficient and disorganized Civil Service has been the inevitable result and corruption has been rampant. In America a Civil Service Commission has been constituted to control recruitment of the Services, but, for the purposes of India, it is from the Dominions of the

[1] See para. 24 of the Report of the Commission.

[2] Because Viscount Lee of Fareham was the President of the Commission.

British Empire that more relevant and useful lessons can perhaps be drawn. Canada, Australia and South Africa now possess Public or Civil Services Acts regulating the position and control of the public services, and a common feature of them all is the constitution of a Public Service Commission, to which the duty of administering the Act is entrusted. It was this need which the framers of the Government of India Act had in mind when they made provision in Section 96C for the establishment of a Public Service Commission . . . .'

Continuing, the Royal Commission recommended[1] that, at the outset, the following functions[2] should be assigned to the Public Service Commission :—

1. 'The recruitment of personnel for the Public Services and the establishment and maintenance of proper standards of qualification for admission to them ; and

2. Quasi-judicial functions connected with the disciplinary control and protection of the Services.'

Under the first head the Commission made the following proposals[3] :—

1. 'The Public Service Commission should be charged with the duty of recruitment for the all-India Services as the agent of the Secretary of State so far as it is carried out in India.

2. In respect of recruitment for the Central Services, and if a Local Government should so desire for Provincial Services (including Services provincialized), it should act as agent of the Secretary of State, the Government of India or the Local Governments, as the case may be.

3. The Public Service Commission should be the final authority, so far as recruitment in India is concerned, for

[1] Para. 27 of its Report.
[2] See in this connection the Public Service Commission (Functions) Rules, 1926, in Appendix T, pp. 601-609 *post*.
[3] Para. 27 of its Report.

determining, in consultation with the Secretary of State, the Government of India or the Local Governments, as the case may be, the standards of qualification and the methods of examination for the Civil Services, whether the channel of entry be by examination or nomination.'

Under the second head it suggested [1] essentially as follows:—

1. Subject, in certain cases,[2] to the final right of appeal to the Secretary of State, 'appeals to the Governor-General in Council against such orders of Local Governments, as are declared by the Governor-General in Council to be appealable, should be referred to the Public Service Commission; the Public Service Commission should report to the Governor-General in Council its judgment on the facts and its recommendation as to the action to be taken. . . .'

2. 'Appeals from the Government of India which now lie to the Secretary of State should hereafter be referred to the Public Service Commission in the same manner as in the case of appeals to the Government of India' (and the Commission will report to the Secretary of State its decisions).

The Royal Commission gave its special attention to the question of the composition of the Public Service Commission. It stated[3]:—

'We would venture . . . to emphasize the paramount importance of securing as members of the Commission, men of the highest public standing, who will appreciate the vital and intimate relationship which should exist between the State and its servants. These Commissioners should be detached so far as practicable from all political associations and should possess, in the case of two of their number at least, high judicial or other legal qualifications. They

[1] Para. 27 of its Report. [2] For details see *ibid*.

[3] Para. 25 of its Report. See also in this connection W. H. Moore's *Constitution of the Commonwealth of Australia* (1910), pp. 194-96.

should, we suggest, be whole-time officers and their emoluments should not be less than those of High Court Judges. The Public Service Commission . . . will be an All-India body. . . .'

Presumably, these suggestions must have been taken into consideration by the authorities concerned at the time of the appointment of the first Public Service Commission in 1926.[1]

Financial Control.

Subject to any Rules which may be made by the Secretary of State in Council with the concurrence of the majority of votes at a meeting of the Council, no office may be added to or withdrawn from the public service, and the emoluments of no post may be varied, except after consultation with such 'finance authority' as may be mentioned in the Rules.[2]

The Indian Civil Service.

By far the most important of the public services in India is the Indian Civil Service.[3] The general work of administration and, for the most part, the administration of justice have been entrusted to it for over a century. In the past its functions have been not merely to execute but, to a great extent, to shape the policy of the Government. 'It has been in effect,' to quote the authors of the Joint Report, 'much more of a government corporation than of a purely civil service in the English sense.'[4] With a few exceptions practically all the important offices under the Government which involve superior control, have been held by its members. This description of the Service is to a large extent true even now. Until 1853, the appointments to the Covenanted Civil Service, as the Service was then designated, were made by the Court

[1] See p. 448 *ante*, foot-note 3.
[2] 96D (2) of the Act. Also see p. 436 *ante*.
[3] Read in this connection Strachey's *India*, ch. vi; also Ramsay MacDonald's *Government of India*, ch. viii; also *The Imperial Gazetteer of India*, vol. iv, pp. 40–44.
[4] See para. 126 of the Joint Report.

of Directors by nomination.[1] This system of appointment was abolished in that year by an Act of Parliament, and the Service was then thrown open to general competition. The first competitive examination was held in 1855.[2] Till very recently, the greater proportion of the appointments to the Indian Civil Service was thus made by competitive examination held in England. The position under the Reforms is somewhat different as will be shown below.

Rules for admission to the Indian Civil Service.

The Secretary of State in Council is empowered by the Act[3] to make, with the advice and assistance of the Civil Service Commissioners, Rules 'for the examination, under the superintendence of those Commissioners, of British subjects and of persons in respect of whom a declaration has been made under Section 96A[4] of the Act, who are desirous of becoming candidates for appointment to the Indian Civil Service.' The Rules are to prescribe the age and qualifications of the candidates, and the subjects of examination. They must be laid before Parliament within fourteen days after they are made, or, if Parliament is not

[1] See Strachey's *India* (1903 ed.), p. 75.

'The meaning of the term "Covenanted,"' says Sir John Strachey, 'is as follows :—The superior servants of the East India Company were obliged to enter into covenants, under which they bound themselves not to engage in trade, not to receive presents, to subscribe for pensions for themselves and their families, and other matters. This custom has been maintained. Successful candidates, after passing their final examinations, enter into covenants with the Secretary of State before receiving their appointments'.—*India* (3rd ed.), p. 75.

[2] *Imperial Gazetteer of India*, vol. iv, p. 41.

[3] Section 97 (1) of the Act.

[4] Under this Section 'the Governor-General in Council, with the approval of the Secretary of State in Council, may, by notification, declare that, subject to any conditions or restrictions prescribed in the notification, any named ruler or subject of any state in India shall be eligible for appointment to any civil or military office under the Crown to which a native of British India may be appointed, or any named subject of any state or any named member of any independent race or tribe, in territory adjacent to India, shall be eligible for appointment to any such military office.'

then sitting, then within fourteen days after the next meeting of Parliament. The candidates, who are certified to be entitled under the Rules, must be recommended for appointment in the order of their proficiency as shown by their examination.[1] Subject to what follows later, only such persons as are so certified may be appointed to the Indian Civil Service by the Secretary of State in Council.

Under the existing Regulations,[2] appointments to the Indian Civil Service are made mainly by competitive examinations held both in India and London. The examination held in London is open to all qualified persons. But in the case of the examination[3] held in India, the Governor-General in Council may at his discretion limit the maximum number of candidates to be admitted to the examination to such number not being less than 200 as he may decide.[4] If a limit is imposed and the number of candidates exceeds that limit, the Public Service Commission must select from among the applicants those who are to be admitted to the examination.[5] In making the selection, however, the Commission must have regard 'to the suitability of the applicants for the Indian Civil Service and to the adequate representation of the various provinces of India.' A candidate must be a male and either a British subject of Indian domicile, or a ruler or a subject of a State in India in respect of whom the Governor-General in Council has made a declaration under section 96A[6] of the Government of India Act. Besides, he must have attained the age of twenty-one and must not have attained the age of twenty-three on the first day of January in the year in

[1] Section 97 (4) of the Act.
[2] These regulations are liable to alteration from time to time.
[3] This examination is held at such time and place as the Governor-General in Council may direct.
[4] See the Government of India's Home Department Notification No. F.-433-27, dated July 20, 1928.
[5] *Ibid.*
[6] See page 454, foot-note 4.

which the examination is held.[1] Further, no candidate can be admitted to the examination unless he has been declared physically fit, and unless he holds a certificate of admission from the Public Service Commission. The candidates who are selected at the open competition held in London are required to remain in the United Kingdom on probation for one or two years, as may be decided by the Secretary of State in Council; while those who are selected at the competitive examination held in India as well as those who are selected in India otherwise than by competitive examination, have to proceed to the United Kingdom and to remain there on probation for a period of two years. The one-year probationers have, at or about the end of the year of probation, to undergo an examination called the Final Examination. The two-year probationers, on the other hand, have, during their period of probation, to undergo two examinations—the Intermediate Examination at the end of the first year and the Final Examination at or about the end of the second year. The subjects of these examinations are such as are specially connected with the future duties of the probationers. 'On arrival in India,' says the *Fifth Decennial Report*, 'the young civilian is posted to the head-quarters of a district to learn his work, and is given the powers of a magistrate of the lowest (third class.) After passing the prescribed examinations—mainly in law, languages, and revenue procedure—he becomes a first class magistrate, and is eligible for promotion to higher grades.'

The Act[2] has also empowered the Secretary of State in Council to make Rules for appointment to the Indian

[1] See the Home Department Notification No. F.-433-27, dated the 20th July, 1928.

The minimum and the maximum age in the case of the examination held in London are 21 and 24 respectively. Vide the *Gazette of India*, November 24, 1928.

[2] Section 97 (6) of the Act.

Civil Service by nomination of persons domiciled in India. Such Rules must be made by him with the concurrence of the majority of votes at a meeting of his Council and cannot have force until they have been laid for thirty days before both Houses of Parliament. Appointments are to be made by the Secretary of State in Council in accordance with those Rules. Under the existing Rules,[1] every candidate for appointment by nomination, must, in addition to being domiciled in India, be either a British subject, or a ruler or subject of a State in India in respect of whom the Governor-General in Council has made a declaration under Section 96A of the Act.[2] Further, he must not suffer from any physical disability, and must possess requisite academic qualifications and satisfy the Governor-General in Council that his character is such as to qualify him for employment in the Indian Civil Service.[3] Besides, he must have, subject to what follows later, attained the age of 21 and must not have attained the age of 23 on the 1st day of January in the year in which the selection for nomination is made by the Public Service Commission.[4]

The Governor-General in Council is required to call upon 'the Public Service Commission to recommend such number of candidates as he may direct, selected with regard to the community to which they belong or to such other considerations as he may prescribe.'[5] The Public Service Commission must make[6] their recommendations under this

[1] See the Indian Civil Service (Nomination) Rules.—Notification No. F.-399-27, dated Simla, the 25th April, 1928. *Vide* also *The Calcutta Gazette*, May 10, 1928.

[2] See p. 454, foot-note 4.

' If the candidate (being a British subject) or his father or mother was not born within His Majesty's Dominion of allegiance, the father must, at the time of the candidate's birth, have been a British subject or the subject of a State in India : and, if alive, must be, or, if dead, must have continued to be until his death, a British subject or a subject of such State.'—The Indian Civil Service (Nomination) Rules (1928).

[3] *Ibid.* [4] *Ibid.* [5] *Ibid.* [6] *Ibid.*

provision primarily from the list of candidates who sat at the annual competitive examination held in India for the Indian Civil Service in the year in which the selection is made. The Commission may include among the persons to be primarily considered any candidate who sat at the annual competitive examination held in London for the Indian Civil Service in the year preceding that in which the selection is made, and who, in its opinion, is exceptionally suitable.[1] For any such candidate the age restriction mentioned before will not apply. The Commission may also, if it considers necessary, call for fresh names in such numbers and from such local Governments as the Governor-General in Council may direct.[2] It must then recommend[3] from the candidates whom it considers suitable, the number, fixed by the Governor-General in Council, arranging the names in order of preference. The Governor-General in Council, in his turn, must forward to the Secretary of State for India in Council the recommendations made by the Commission and propose candidates for appointment. Candidates selected for appointment must 'proceed to, and remain in, the United Kingdom on probation for such period and in such manner as is prescribed by the regulations made by the Secretary of State for India in Council for the probation in the United Kingdom and the further examination of selected candidates for the Indian Civil Service.'[4]

Certain important civil offices in India are reserved to members of the Indian Civil Service.[5] But it is also provided[6] against this that 'the authorities in India, by whom appointments are made to offices in the Indian Civil Service, may appoint to any such (reserved) office any

[1] *Vide* the Indian Civil Service (Nomination) Rules (1928).
[2] *Ibid.* [3] *Ibid.*
[4] The Indian Civil Service (Nomination) Rules (1928). In this connection see page 456 *ante*.
[5] Section 98 of the Act; see Appendix K.
[6] Section 99 of the Act.

person of proved merit and ability, who is 'domiciled in British India and born of parents habitually resident in India, and not established there for temporary purposes only, although the person so appointed has not been admitted to that Service' in accordance with the Rules stated in the few preceding paragraphs. Every such appointment must be made subject to such Rules as may be made by the Governor-General in Council and sanctioned by the Secretary of State in Council with the concurrence of the majority of votes at a meeting of his Council. The Governor-General in Council 'may, by resolution, define, and limit the qualification of persons who may be appointed' under the above provision. Every such resolution is subject, however, to the sanction of the Secretary of State in Council, and cannot have force until it has been laid for thirty days before both Houses of Parliament.

This provision for appointment to reserved offices was first made by Section 6 of the Government of India Act of 1870, which declared it to be 'expedient that additional facilities should be given for the employment of natives of India, of proved merit and ability, in the Civil Service of Her Majesty in India.'[1] No action was taken, however, under this Section until 1879, 'when rules were laid down by Lord Lytton with the approval of the Secretary of State.'[2] These Rules 'established what was called the Statutory Civil Service'.[3] The reason for the insertion of the Section in the Act of 1870 was that, 'owing to the religious and other difficulties attendant on a voyage to England,' the number of Indians who had been able to enter the Indian Civil Service through competitive examination was, till 1870, very small.[4]

[1] 33 and 34 Vict. C. 3. *Vide* P. Mukherji's *Constitutional Documents*, vol. i pp. 225–26.
[2] Strachey, *India*, p. 79.
[3] *Imperial Gazetteer*, vol. iv, p. 43.
[4] *Ibid*

Under the existing Rules prescribed by the Governor-General in Council and sanctioned by the Secretary of State in Council, a local Government may, with the previous approval of the Governor-General in Council and of the Secretary of State in Council, declare the number of superior executive and judicial offices, ordinarily reserved to members of the Indian Civil Service, to which persons not being members of that Service may be appointed.[1] And it has been further laid down by those Rules that the local Government may appoint—

(1) to a superior executive office a member of the Provincial Civil Service subordinate to the local Government; and

(2) to a superior judicial office a member of the Provincial Civil Service subordinate to the local Government, or a person who at the time of his appointment is—

- (*a*) a barrister of England or Ireland, or a member of the Faculty of Advocates of Scotland; or
- (*b*) a vakil, pleader, advocate, or an attorney of a High Court in India; or
- (*c*) a pleader or an advccate of a Chief Court[2]; or
- (*d*) a pleader[3] of a District Court.

Finally, there is one more way[4] of recruitment to the Indian Civil Service. If it appears to the authority in India by whom an appointment is to be made to an office reserved to members of the Indian Civil Service, that a person who is not a member of that Service should, in the special circumstances of the case, be appointed thereto 'the authority may appoint thereto any person who has resided for at least seven years in India and who has, before his appointment, fulfilled all the tests (if any) which

[1] The Government of India Notification No. F-438, dated March 30, 1922.

[2] Or of a Judicial Commissioner's Court.

[3] Of not less than five years' standing.

[4] Sec. 100 of the Act.

would be imposed in the like case on a member of that Service.'

Every such appointment is provisional only, and must be reported forthwith to the Secretary of State, with the special reasons for it; and, unless the Secretary of State in Council approves the appointment with the concurrence of a majority of votes at a meeting of his Council, and within twelve months from the date of the appointment intimates his approval to the authority by whom the appointment was made, the appointment must be cancelled.

Indians in the Indian Civil Service.

The proportion of Indians in the Indian Civil Service was only 13 per cent. in 1921.[1] The percentage of recruitment of Indians for the Service 'was fixed in 1920 at 33 per cent., commencing in the year 1920, and rising by 1½ per cent. to 48 per cent. to be attained in the year 1930, including listed posts.'[2] The Lee Commission recommended[3] that it was desirable, in order not only to carry out the spirit of the Declaration of August, 1917, but to promote an increased feeling of camaraderie and equal sense of responsibility between British and Indian members of the Service, that a proportion of 50–50 in the cadre of the Indian Civil Service should be attained without undue delay and that the present rate of Indian recruitment should be accelerated with this object.

It was accordingly announced in an official communique[4] that His Majesty's Government had decided to accept generally the recommendations of the Lee Commission in regard to the rates at which the recruitment of Indians for the Indian Civil Service (as well as for certain other all-India Services) should be carried out.

[1] *Vide* the statement made by Sir William Vincent showing the percentage of Indians in certain public services.—*India's Parliament*, vol ii.

[2] See para. 35 of the *Report of the Lee Commission*.

[3] *Ibid.*

[4] *Vide The Statesman* (Dak edition), December 7, 1924.

It is worthy of note in this connection that, while the ultimate executive authority with regard to all questions relating to the civil services in India has hitherto been, and still is, as we have stated before, the Secretary of State in Council, 'the appointment and removal of all officers of the public service of the Union' (of South Africa) are vested in the Governor-General in Council thereof.[1] The power of appointment may be delegated, however, by the Governor-General in Council, or by a law of the Union, to some other authority. The position with regard to the appointment and removal of civil servants is practically the same also in the Commonwealth of Australia.[2]

It may, however, be stated here that on the advice of the Lee Commission, His Majesty's Government decided in 1924 to transfer[3]—

(1) to the Government of India the power of making appointments to certain 'Central[4] Services'; and

(2) to local Governments that of making appointments to services[5] 'operating only in Transferred departments.'

The present position has been stated by Sir Malcolm Seton,[6] Deputy Under-Secretary of State in the India Office, as follows :—

'No further appointments will be made to the All-India Services employed in the Transferred field. The provincial governments, i.e., the Governor acting with his Ministers, will recruit the personnel required for the work hitherto done by the Educational and other services. But existing

[1] Section 15 of the South Africa Act, 1909.
[2] Section 67 of the Commonwealth of Australia Constitution Act, 1900.
[3] See *The Statesman* (Dak edition), December 7, 1924.
[4] These are directly under the Government of India. See paras. 12, 18 and 19 of the *Report of the Lee Commission*.
[5] E.g., the Indian Educational Service, the Indian Agricultural Service, the Indian Veterinary Service.—See para. 14 of the *Lee Commission's Report*.
[6] *The India Office* (1926), pp. 148–49.

members retain the position they have held since 1920, serving under Ministers but enjoying all the safeguards provided by the Act, and the rules made under it for officers appointed by the Secretary of State in Council.

'For services employed on the Reserved side recruits will be appointed as hitherto by the Secretary of State in Council with all the rights[1] implied in such appointment. The principal services of this class are the Indian Civil Service and the Police. But the proportion of Indian to European recruits in these services is to be increased so as to secure that the composition of the services, as a whole, will be half European and half Indian in fifteen years for the Indian Civil Service, and in twenty-five years for the Police.'

Provincial and Subordinate Services.

The Civil Services in India are divided into five branches —All-India,[2] Central, Provincial, Subordinate and Special.[3] The Central Services again are divided[4] into Class I and Class II. Appointments to the Provincial and Subordinate Services are made either by competitive examination, or by direct nomination, or by promotion.

There is in India an Auditor-General[5] who is appointed by

[1] See pp. 444-48.

[2] The All-India Services are, generally speaking, 'recruited by the Secretary of State, for work in any part of India, and . . . each, though scattered through the Provinces, forms one Service with one basis of remuneration. Though an officer of an All-India Service is assigned to and as a rule remains in one Province throughout his career, he may be transferred to another Province; while a certain number of officers are taken by the Government of India from the Provinces to assist in the discharge of its central functions. Services of this nature differ essentially from the Provincial Services which are recruited in a Province solely for provincial work, and it is to mark this distinction that these Services have been given the title of "All-India"'. The Report of the Lee Commission, para 6. See also *The Government of India Act* (published by the Government of India), pp. 229-30.

[3] I.e., consisting of officers holding special posts.

[4] See the Public Service Commission (Functions) Rules, 1926, in Appendix T.

[5] See rules re: the Auditor-General in India made by the Secretary of State in Council under Section 96D(1) of the Act.

the Secretary of State in Council and who holds office during His Majesty's pleasure. The Secretary of State in Council is required by the Act to make, by Rules, provision for his pay, powers, duties and conditions of employment, or for the discharge of his duties in the case of a temporary vacancy or absence from duty. Such rules must be made with the concurrence of the majority of votes at a meeting of the Council of India.

Under the existing Rules regarding the Auditor-General, the pay of the Auditor-General is Rs. 5,000 per month. On vacating his office, he is not eligible[1] for any other post under the Crown in India. He is entitled to such pension as may previously have been, or may in a particular case be, fixed by the Secretary of State in Council. If a temporary vacancy occurs in the office of Auditor-General or if the Auditor-General happens to be absent from duty, the Governor-General in Council may appoint an officiating Auditor-General.

Subject to any general or special orders of the Secretary of State in Council, the Auditor-General is the final audit authority in India and responsible for the efficiency of the audit of expenditure in India from the revenues of India. He is, to the extent authorized by the rules regarding his duties and powers, the administrative head of the Indian Audit and Accounts service. He can inspect, either personally or through any audit officer, any Government office of accounts in India. He may frame rules in all matters pertaining to audit.[2] He should bring to the notice of the Governor-General in Council or the local Government, as the case may be, any breach of canons regarding audit.[3] He must, on such dates as he may prescribe, obtain from each

[1] This is necessary for ensuring independence in him.
[2] *Vide* Rules re: the Auditor-General in India under Section 96D (1) of the Act.—*The Gaz. of India*, Aug. 21, 1926, Part 1, pp. 917–20.
[3] *Ibid.*

principal auditor[1], and from any officers of the Indian Audit Department to whom he may entrust this duty, Audit and Appropriation Reports reviewing the results of the audit conducted by and under such officer or officers during the past official year.[2] He must forward[3] to the Secretary of State through the Governor-General in Council the several reports dealing with the total expenditure in India in each year with his detailed comments on each report, and may also offer such further comments of a general nature on all of them as he may think fit. Besides, he has[4] various other duties and powers regarding audit and accounts, and has also certain disciplinary powers over officers of the Indian Audit Department of any class lower than Class 1. He may even dismiss from service any officer of the Indian Audit Department other than an officer appointed thereto by the Secretary of State in Council or the Governor-General in Council.[5]

[1] E. g., the head of an office of accounts or of audit who is immediately subordinate to the Auditor-General.

[2] *Ibid.*

[3] *Ibid.*

[4] *Ibid.* Rules re. the Auditor-General in India made under Section 96D(1) of the Government of India Act.

[5] *Ibid.*

CHAPTER XXIII

FINANCE

The revenues of India and their application—Accounts of the Secretary of State with the Bank of England—Financial arrangements between the Government of India and the provincial Governments—Introduction of financial decentralization—Evolution of the system of 'divided heads'—The Joint Report on the post-Reforms financial arrangements—Appointment of a Committee on financial relations—The existing financial arrangements: Allocation of revenue—Allocation of share in the Income-Tax—Provincial contributions to the Government of India—Excess contributions in case of emergency—Payment of Government revenues into the public account—Advances by the Government of India—Capital expenditure on irrigation works—Famine Relief Fund—Provincial borrowing—Provincial Taxation—Conclusion.

The revenues of India and their application.

The revenues of India are received for and in the name of the Crown, and must, subject to the provisions of the Government of India Act, be applied for the purposes of the government of India alone.[1] They 'include[2] all the territorial and other revenues of or arising in British India,' and, in particular, tributes and other payments from Indian States, fines and penalties imposed by any court of law in British India, and all property, movable or immovable, in British India 'escheating for want of an heir or successor, or devolving as *bona vacantia*[3] for want of a rightful owner.'

[1] Section 20 of the Government of India Act.
[2] *Ibid.*
[3] *Bona vacantia* means 'those things in which nobody claims a property, and which belong to the Crown by virtue of its prerogative.' —Wharton's *Law-Lexicon*.

There are to be charged[1] on these revenues alone—

(1) all the debts and other liabilities of the East India Company;

(2) 'all expenses, debts and liabilities lawfully contracted and incurred on account of the Government of India;' and

(3) all payments under the Government of India Act, except so far as is otherwise provided by it.

But, 'except for preventing or repelling actual invasion of His Majesty's Indian possessions, or under other sudden and urgent necessity,' the revenues of India cannot, without the consent of Parliament, be used[2] for defraying the expenses of any military operations carried on beyond the external frontiers of those possessions by His Majesty's forces maintained out of those revenues. This safeguard was originally provided in the Government of India Act of 1858 that it might serve, it was said, 'as a pecuniary check on the prerogative of the Crown in regard to the army of India.'[3] If there were no such provision in the Act, it was feared[4] that the Crown might employ the Indian troops 'in wars wholly and entirely unsanctioned by Parliament,' and that 'the whole force of India might be carried to any portion of the world.' The real intention of the framers of the Act in making the provision appears, however, to have been not so much to limit the prerogative of the Crown (of making war or peace) as to protect the revenues of India.[5]

[1] Section 20 of the Government of India Act.

[2] And if any naval forces and vessels raised and provided by the Governor-General in Council are in accordance with the provisions of the Act placed at the disposal of the Admiralty, the revenues of India must not, without the consent of both Houses of Parliament, be applicable to defraying the expenses of any such vessels or forces if and so long as they are not employed on Indian naval defence.—Section 22 of the Act.

[3] See the Earl of Derby's speech on the Government of India Bill, 1858 —P. Mukherji's *Constitutional Documents*, vol. i, pp. 172-73.

[4] *Ibid.* [5] *Ibid.*

But the phrase 'or under other sudden and urgent necessity' above is very significant. Under it the revenues of India may, without the consent of Parliament, be applied to defraying the expenses of any military operations carried on by the Indian forces beyond the frontiers of India and in any part of the world. So long as that phrase is there, the safeguard provided against the improper expenditure of Indian revenues appears to be inadequate.

Accounts of the Secretary of State with the Bank of England.

The portion of the revenue of India which is remitted to the United Kingdom and 'all money arising or accruing in the United Kingdom from any property or rights' vested in the Crown for the purposes of the government of India, or from the sale or disposal thereof, are to be paid to the Secretary of State in Council, to be applied for the purposes of the Government of India Act.[1] All such revenue and money have, except as is otherwise provided in the Act, to be deposited in the Bank of England to the credit of an account entitled 'The Account of the Secretary of State in Council of India.' The Secretary of State in Council is empowered by the Act to authorize[2] 'all or any of the cashiers of the Bank of England—

(1) to sell and transfer all or any part of any stock standing in the books of the Bank to the account of the Secretary of State in Council;

(2) to purchase and accept stock for any such account; and

(3) to receive dividends on any stock standing to any such account';

and to direct 'the application of the money to be received in respect of any such sale or dividend.'

[1] Section 23 (1) of the Act.
[2] For details see section 24 of *ibid.*

Financial arrangements between the Government of India and the provincial Governments: introduction of financial decentralization.

Before the Viceroyalty of Lord Mayo the provincial Governments in India had little liberty in respect of their expenditure of the public revenue. 'Towards the end of every year,' writes[1] Sir William Hunter, 'each Local Government presented to the Governor-General in Council its estimates of expenditure during the coming twelve months. The Governor-General in Council, after comparing these aggregate estimates with the expected revenue from all India, granted to each Local Government such sums as could be spared for its local services.' The provincial Governments, says another distinguished authority,[2] 'could order, without the approval of the Supreme Government, and without its knowledge, the adoption of measures vitally affecting the interests of millions of people; they could make changes in the system of administration that might involve serious consequences to the State; they could, for instance . . . , alter the basis on which the assessment of the land revenue had been made, but they could carry out no improvements, great or small, for which the actual expenditure of money was required. If it became necessary to spend £20 on a road between two local markets, to rebuild a stable that had tumbled down, or to entertain a menial servant on wages of 10*s.* a month, the matter had to be formally reported for the orders of the Government of India.' This system was devised undoubtedly to ensure economy in public expenditure, but in practice it acted in a way most unfavourable to economy. As Sir William Hunter has remarked,[3] 'The Local Governments were under no compulsion to adjust

[1] *The Earl of Mayo*, p. 150.
[2] See Strachey, *India: Its Administration and Progress* (third edition), pp. 112–13.
[3] *The Earl of Mayo*, pp. 150–51.

their expenditure to any limited scale of income, and several of them fell into the habit of framing their demands upon the Imperial Treasury, with an eye rather to what they would like to spend than what was absolutely required. "Practically," writes one who had the official control of the system, "the more a Government asked, the more it got; the relative requirements of the Local Governments being measured by their relative demands. Accordingly they asked freely and increasingly. Again, knowing that any money saved at the end of the year was lost to the provincial administration, a Local Government was little anxious to save."' In such circumstances, the distribution of the public income, as Sir Richard Strachey[1] wrote at the time, 'degenerated into something like a scramble, in which the most violent had the advantage, with very little attention to reason; as local economy brought no local advantage, the stimulus to avoid waste was reduced to a minimum, and as no local growth of the income led to local means of improvement, the interest in developing the public revenues was also brought down to the lowest level.' Other unhappy consequences of this system were frequent conflicts of opinion between the Government of India and the provincial Governments, and 'interference by the former not only in financial but in administrative details with which the local authorities were alone competent to deal.'[2]

A scheme to remedy this state of affairs and also to secure a more economical and efficient financial administration was devised by Sir Richard Strachey in 1867. The underlying principle of the scheme was that 'each provincial Government must be made responsible for the management of its own local finances.'[3] The scheme was adopted by Lord Mayo's Government, which issued on December 14, 1870, a

[1] See p. 113 of Sir John Strachey's *India: Its Administration and Progress*.
[2] *Ibid* [3] *Ibid*.

Resolution embodying it. Under this Resolution, which was in due course approved by the Secretary of State in Council, 'certain heads of expenditure were handed over to the more unfettered[1] control of Local Governments, together with the means of providing for them, consisting partly of the receipts under the same heads, and partly of a fixed consolidated allotment from the Imperial revenue. The Governments were to use as they pleased any surplus, but to make good (by the exercise of economy and, if necessary, by raising local taxes) any deficit, resulting from their administration.'[2] This is popularly known as Lord Mayo's Decentralization Scheme of 1870.

The system of financial decentralization thus initiated by the Government of Lord Mayo was extended in 1877 during the Viceroyalty of Lord Lytton, and was further developed during the administration of later Viceroys by quinquennial, and other kinds of settlements. The objects which the authors of these settlements aimed at 'were[3] to give the Local Governments a strong inducement to develop their revenues and practise economy in their expenditure, to obviate the need for interference on the part of the Supreme Government in the details of Provincial administration, and at the same time to maintain the unity of the finances in such a manner that all parts of the administration should receive a due share of growing revenues required to meet growing needs, and should bear in due proportion the burden of financial difficulties which must be encountered from time to time.' The system which was finally evolved and which was in force before the Reforms is known as the

[1] I.e., each local Government was empowered, subject to certain restrictions, to allocate the resources placed at its disposal as seemed best.

[2] See para. 2 of the Resolution by the Government of India on the extension of Provincial Finance, dated September 30, 1881.—*Vide* P. Mukherji's *Constitutional Documents*, vol. i p. 631.

[3] *Imperial Gazetteer*, vol. iv, 190.

system of 'divided heads.' Under it the proceeds of certain heads of revenue were taken by the central Government; those of certain others were made over to the provincial Governments to enable them to meet their expenditure on the ordinary provincial services; and those of the remaining heads were divided between the central and the provincial Governments. Similarly, the heads of expenditure were classified as wholly central, wholly provincial, and partly central and partly provincial.[1] The receipts and expenditure in England were classed as central.[2] The central Government received[3] the whole of the revenue under the heads Opium, Salt, Customs, Tributes from Indian States, Post Office, Telegraph, Railways (with the exception of one small line), Mint, and Military Receipts, and were 'responsible for the expenditure under the corresponding heads, as well as for Home charges and the bulk of the expenditure under the head Interest on Debt.' The two most important heads of revenue which were divided, were Land Revenue and Income-tax.[4] Excise was a divided head in some provinces and a provincial head in others.[5]

Evolution of the system of 'divided heads.'

But, though the provincial Governments had to a large extent a free hand in administering their share of the revenue, they had 'no inherent legal right' to it. Their financial administration was subject to the general supervision of the Government of India, and they were bound by a number of restrictions on expenditure.[6] 'For any large and costly innovations' they had to depend 'on doles out of the Indian surplus.'[7] They had no borrowing powers, nor could they impose any tax without the sanction of the Government of India. In respect of financial matters, as in

[1] See p. 147 of *The Fifth Decennial Report*. [2] *Ibid*. [3] *Ibid*.
[4] Joint Report, para. 203. [5] *Ibid*.
[6] *The Fifth Decennial Report*, p. 147.
[7] Joint Report, para. 201.

respect of all others, the provincial Governments had, and exercised, only delegated authority.

The Joint Report on post-Reforms financial arrangements.

Such was the character of the financial arrangements between the central and the provincial Governments just before the introduction of the Reforms. The authors of the Joint Report were of opinion[1] that, though these arrangements were undoubtedly an advance upon the earlier centralized system, they constituted no more than a half-way stage. They held, further, that, if the popular principle was to have fair play at all in the provincial Governments, it was imperative that some means should be found of securing to the provinces entirely separate revenue resources. Accordingly, they recommended the abolition of the system of divided heads, the entire separation of the resources of the central and the provincial Governments, and also 'a complete separation of the central and provincial budgets'. To these ends they outlined a scheme[2] in their Report. As it was found that, as a result of this re-arrangement, there would be a large deficit in the Government of India's budget, they proposed a plan for meeting the deficit by means of contributions from the provinces. Their suggestion was that each province should contribute to the Government of India 87 per cent. of the difference between its gross revenue under the allocation of resources proposed in their Report and its gross expenditure.[3] As this would impose a very much heavier burden upon some provinces than upon others, they also advised[4] that it should be one of the duties of the periodic commission which they proposed should be

[1] Joint Report, para. 109.
[2] See Joint Report, paras. 200–11.
[3] The power to levy contributions from the provinces was taken in Section 45A (2) of the Act.
[4] See Joint Report, paras. 206 and 207.

appointed to examine the development of constitutional changes after ten years' experience of their working, to reinvestigate the question of the provincial contributions to the Government of India. But the Government of India pressed, in its first Despatch[1] on Indian Constitutional Reforms, for an earlier treatment of the matter, and urged that a Committee on Financial Relations should be appointed to advise fully upon the subject, so that each province might know exactly how it stood when the new regime started. The Joint Select Committee accepted and endorsed this recommendation of the Government of India.[2] A Committee consisting of three members, was accordingly appointed by the Secretary of State with the following terms of reference[3] :—

Appointment of a Committee on Financial Relations.

'To advise on—

(1) the contributions to be paid by the various provinces to the central Government for the financial year 1921–22;

(2) the modifications to be made in the provincial contributions thereafter with a view to their equitable distribution until there ceases to be an all-India deficit;

(3) the future financing of the provincial loan accounts; and

(4) whether the Government of Bombay should retain any share of the revenue derived from income-tax.'

The Committee was presided over by Lord Meston and is, therefore, popularly known as the Meston Committee. It recommended a scheme of contribution which was different in certain material respects from the scheme proposed by the authors of the Joint Report. Further, its scheme differed from the latter also on the question of the heads of revenue

[1] *Vide* para. 61 of the Despatch of March 5, 1919.
[2] The Joint Select Committee's Report on Clause 41, G. I. Bill, 1919.
[3] *Vide* para. 3 of the Report of the Financial Relations Committee.

to be allocated to the provinces. The authors[1] had proposed that the central Exchequer should receive the whole of the Income-tax and the revenue from General Stamps; and that the provinces should retain the entire receipts from Land revenue, Irrigation, Excise and Judicial Stamps, while they (i.e., the provinces) should be wholly responsible for the corresponding charges and for all expenditure in connection with famine relief. The Meston Committee agreed with them that the whole of the Income-tax proceeds should be credited to the central Government, but differed from them in that it advised that General Stamps should be made a provincial head throughout.[2] The recommendations of this Committee as modified by the Parliamentary Joint Select Committee,[3] and as further modified[4] subsequently, constitute the basis of the existing financial arrangements between the Government of India and the provincial Governments.

The existing financial arrangements: allocation of revenue.

Under the existing financial arrangements[5] the provincial Governments[6] derive their revenue from the following sources, namely :—

(1) balances (if any) still standing at the credit of the provinces ;

[1] See the Meston Committee's Report, para. 5, and the Joint Report, para. 203.

[2] The Meston Committee's Report, para. 8.

[3] See the 'Second Report from the Joint Select Committee on the Government of India Act, 1919 (Draft Rules)', Part I.

[4] See App. U.

[5] See Devolution Rule 14.—App. B.

The revenues of Berar have been allocated to the Government of the Central Provinces. This allocation is subject to the following conditions, namely :—

(1) the Government of the Central Provinces is to be responsible for the due administration of Berar ; and

(2) if in the opinion of the Governor-General in Council provision has not been made for the expenditure necessary for the safety and tranquillity of Berar, the allocation is to be terminated by order of the Governor-General in Council, or to be diminished by such amount as the Governor-General in Council may direct.—*Devolution Rule 14*. Also see Appendix U.

[6] Of Governors' provinces.

(2) receipts accruing in respect of provincial subjects ;[1]

(3) recoveries of loans and advances given by the provincial Governments and of interest paid on such loans ;

(4) payments made to the provincial Governments by the Government of India or by one another for services rendered or otherwise ;

(5) the proceeds of any taxes which may be lawfully imposed for provincial purposes ;

(6) the proceeds of any loans which may be lawfully raised for provincial purposes ;

(7) a share (determined in the way described below) ' in the growth of revenue derived from Income-tax collected in the provinces, so far as that growth is attributable to an increase in the amount of income assessed ' ; and

(8) any other sources which the Government of India may declare to be sources of provincial revenue ; (for instance, fees charged in respect of the grant or renewal of licences under the Indian Arms Rules, 1920, have been declared to be a source of provincial revenue).

Allocation of share in the Income-tax.

Though the authors of the Joint Report urged the importance of the entire separation of central from provincial finance, the separation has not, however, been completely effected. As the recommendations of the Meston Committee, and specially those which related to the allocation of the heads of revenue, aroused strong dissatisfaction in some provinces, particularly the three presidencies, the Joint Select Committee suggested, on grounds of policy, that there should be granted to all provinces some share in the growth of revenue from taxation on income so far as the growth would be due to an increase in the amount of income assessed.[2] Thus Income-tax continues to be a

[1] See *The Government of India Act*, published by the Government of India, p. 188.

[2] The Joint Select Committee's Second Report on Draft Rules, Part I.

divided head even under the Reforms. The manner in which the provincial share of the tax is determined is as follows :—If the assessed income of any year[1] subsequent to the year 1920–21 exceeds in a Governor's province the assessed income of the year 1920–21, the province is entitled to receive 'an amount calculated at the rate of three pies in each rupee of the amount of such excess.'[2] As regards the cost of the Income-tax establishments in the provinces, the central Government has been bearing it entirely since April 1, 1922.[3]

It may also be noted here that 'it is not permissible[4] to incur expenditure from central revenues on provincial subjects or to make assignment from central to provincial revenues for expenditure on a provincial subject, except in so far as such expenditure may be necessary in connection with matters pertaining to a central subject, in respect of which powers have been conferred by or under any law upon a local Government.'[5]

Provincial contributions to the Government of India.

The provincial Governments, with the exception of the Government of Bihar and Orissa, were required to make annually a total contribution of 983 lakhs of rupees, or such smaller sum as might be determined by the Governor-General in Council, to the Government of India.[6] In the financial year 1921–22 the contributions paid to the

[1] The assessed income of any year subsequent to the year 1920-21 means 'the amount of income brought under assessment under the Indian Income-tax Act, 1918, in that year in respect of which income tax is collected, whether in that year or thereafter.'—(Revised) Devolution Rule 15. See *ibid.* for further details.

[2] See *Ibid.* For further details see App. B.

[3] Vide *Bengal Legislative Council Proceedings*, vol. vii, No. 1, 1922, p. 182.

[4] Note to Resolution No. 1448-E.A.—*The Gazette of India*, October 7, 1922, Part I, p. 1214.

[5] Or for payment for services rendered by a local Government.

[6] See Devolution Rule 18.—Appendix B.

Government of India by the local Governments mentioned below were as follows [1] :—

Name of Province	Contributions (in lakhs of rupees)
Madras	348
Bombay	56
Bengal	63
United Provinces	240
Punjab	175
Burma	64
Central Provinces and Berar ...	22
Assam	15

This scale of contributions for the year 1921–22 had been determined on the advice of the Meston Committee. The province of Bihar and Orissa had been exempted from the payment of any contribution on account of its inability to pay anything. The apparently favoured treatment of some provinces, Bengal and Bombay for instance, was, as the Meston Committee had pointed out,[2] due to two reasons. First, they had been light gainers in the distribution of revenues under the Reforms. Secondly, their indirect contributions to the central Government through Customs and Income-tax were considerable. The Joint Select Committee recommended that in no case the initial contribution payable by any province should be increased.

If, however, for any financial year the Government of India determined as the total amount of the (provincial) contribution a sum smaller than that payable in the preceding year, a reduction was to be 'made in the contributions of those local Governments only whose last previous annual contribution exceeded the proportion specified (hereinafter) of the smaller sum so determined as the total contribution';

[1] See Devolution Rule 17 in Appendix B.
[2] See para. 22 of the Meston Committee's Report.

and any reduction so made was to be proportionate to such excess [1] :—

Madras	... ...	17-90ths
Bombay	... ...	13-90ths
Bengal	... ...	19-90ths
United Provinces	... ...	18-90ths
Punjab	... ...	9-90ths
Burma	... ...	6½-90ths
Central Provinces and Berar	...	5-90ths
Assam	... ...	2½-90ths

The Select Committee appointed by Parliament to revise the draft Rules made under the Government of India Act, recognized the peculiar financial difficulties of the presidency of Bengal under the new scheme of provincial finance. It therefore commended the case of Bengal to the special consideration of the Government of India.[2] In view of this special recommendation of the Committee and also in view of the strong and persistent protest of the Government of Bengal against the whole basis of the post-Reforms Financial Settlement, the Government of India exempted Bengal from the payment of any contribution for six years with effect from the year 1922–23.[3]

The Select Committee had also urged that the Government of India and the Secretary of State in Council should, in regulating their financial policy, make it their constant endeavour to render the central Government independent of provincial assistance at the earliest possible date.[4] The Government of India announced in 1922 its intention of shaping its financial policy towards the reduction, and

[1] Devolution Rule 18. See Appendix B.

[2] The Joint Select Committee's Second Report on Draft Rules, Part 1.

[3] *Vide* the Bengal Legislative Council Proceedings, Feb. 20th, 1928

[4] The Joint Select Committee's Second Report on Draft Rules, Part 1.

ultimate extinction, of the provincial contributions ; but at the same time it declared its inability to give any undertaking as to the definite period within which the contributions would be abolished or as to the pace of their reduction.[1] The Secretary of State also expressed his concurrence with the Government of India in this policy.[2] We are glad to note here that effect has since been given to this policy. The Government of India's Budgets for 1925–26 and 1926–27 'effected a reduction in the provincial contributions amounting to 3·75 crores or, if the Bengal contribution be included, a reduction from 9·83 crores by 4·38 crores to 5·45 crores;'[3] and the Budget for the year 1927–28 provided for the complete remission, temporarily for that year, of the provincial contributions.[4] Further, they have been completely and finally remitted by the Government of India with effect from the year 1928–29.[5] It need not perhaps be pointed out that this final and complete abolition of the provincial contributions is undoubtedly one of the most important financial measures adopted by the Government in recent years.[6] Its beneficial effect will be far-reaching. As some of the provinces,[7] however,

[1] *Vide* the Despatch of the Government of India to the Secretary of State, dated July 13, 1922, on financial contributions, etc.

[2] *Vide* the Reply of the Secretary of State to *ibid.*

[3] *Budget for 1927–28* (Government of India), pp. 136–39. [4] *Ibid.*

[5] Sir Basil Blackett's Budget speech on Feb. 29, 1928. [6] See App. U.

[7] For instance, Bengal. 'When the Government of Bengal put their case before the (Simon) Commission, one of the most important points that they will urge is that the Financial Settlement was wrong *ab initio* and treated Bengal most unfairly, and that it was largely owing to the shortness of funds that the working of the reformed constitution in Bengal has been so hampered and that Ministers have found it so difficult to carry on. The Government of Bengal will put in the forefront of their case a claim for a complete revision of the Financial Settlement, at any rate so far as Bengal is concerned, and unless that is done, I am convinced that all parties will be unanimous in thinking that the successful working of the new constitution will be impossible in Bengal, however good that constitution may be in other ways.'—From the Budget speech of the Finance Member, Bengal, on Feb. 20, 1928.

are still in financial difficulty, what is necessary now is such a new re-allocation of revenues between the central and provincial Governments as will enable them each to incur all necessary expenditure and, at the same time, to balance their Budgets. While we are writing these pages, the question is engaging the attention of the Simon [1] Commission.

In cases of emergency any provincial Government may be required by the Government of India, with the sanction of, and subject to the conditions approved by, the Secretary of State, to make a contribution to the central Government.[2] Any such contribution payable by a provincial Government must be the first charge on its revenues, and must be paid ' in such instalments, in such manner, and on such dates, as the Governor-General in Council may prescribe.' [3]

Payment of Government revenues into the public account.

The revenues of the Government of a province are required to be paid into the public account, of which the Governor-General in Council is the custodian, and to be credited to the Government of the province. The Governor-General in Council may prescribe by order, with the previous sanction of the Secretary of State in Council, the procedure to be followed ' in the payment of moneys into, and in the withdrawal, transfer and disbursement of moneys from the public account, and for the custody of moneys standing in the account.'[4] He may, by such order, delegate power in these respects to the Auditor-General, the Controller of the Currency and to local Governments.

If a local Government is not permitted by the Government of India to draw any portion of its balance with the latter, the latter must pay interest to the former in respect of the same. The Government of India may also pay to a

[1] See ch. xxv. [2] Devolution Rule 19. [3] *Ibid.* 20. [4] *Ibid.* 16.

local Government interest on its surplus balances on such conditions as it may, with the approval of the Secretary of State, prescribe.[1]

Advances by the Government of India.

The Government of India may at any time make[2] to a local Government an advance from its revenues on such terms as to interest and repayment as it may think fit. If a local Goverment has not yet paid off its debts to the Government of India, which it owed to the latter on April 1, 1921, on account of advances made from its provincial loan account,[3] it is required to pay interest thereon on such dates as may be fixed by the Governor-General in Council, and, in addition, to repay, by annual instalments, the principal of the debt by March 31, 1933, unless the Government of India otherwise directs.[4]

Capital expenditure on irrigation works.

The capital sums spent by the Government of India 'on the construction in the various provinces of productive and protective irrigation works and of such other works financed from loan funds as may be handed over to the management of local Governments' are to be treated as advances made to the local Governments by the Government of India.[5] Such advances will carry interest payable on such dates as may be fixed by the Governor-General in Council.

The payment of interest on loans and advances made to provinces and the repayment by the latter of the principal

[1] Devolution Rule 22.
[2] *Ibid.*, 25.
[3] The provincial loan account is the name of the account of loans and advances given by each provincial Government to local bodies, agriculturists, landlords, etc. Before the Reforms these loans and advances were financed by the central Government, but now each province finances its own loan transactions.—See Wattal's *Financial Administration in British India*, p. 324; see also the Meston Committee's Report, Chap. V.
[4] Devolution Rule 23.
[5] *Ibid.*, 24.

of the debt which they owed to the central Government on April 1, 1921, are to have priority over all other charges on their revenues, except any contributions payable to the Government of India.[1]

Famine Relief Fund.

Shortly before the Reforms, expenditure on famine relief was made a divided head, the cost being borne by the central and the provincial Governments in the proportion of three to one.[2] The authors of the Joint Report stated that, as land revenue would be made a provincial head when the redistribution of resources as proposed in their Report would be effected, the provinces should take over the very heavy liability for famine relief and protective works.[3] Accordingly, it has been laid down in Devolution Rule 29 and Schedule IV[4] to the Devolution Rules, as subsequently amended, that the local Governments mentioned below must, save as otherwise provided, 'make in every year beginning with the financial year 1929–30 provision in their budgets for expenditure upon the relief of famine of such amounts respectively (hereinafter referred to as the annual assignments), as are stated against each'

	Rs.
Madras	3,00,000
Bombay	12,00,000
Bengal	2,00,000
United Provinces ...	16,00,000
Punjab	2,00,000
Bihar and Orissa ...	3,00,000
Central Provinces ...	4,00,000

[1] Devolution Rule 26.
[2] Joint Report, para. 108.
[3] *Ibid.*, para. 203.
[4] Schedule IV, as it originally was, has been amended with effect from 1929–30. The amended schedule is given in the text.—*Vide* the Government of India's Home Department No. F.—174–II–28, dated September 27, 1928. See also App. B, Sch. IV, pp. 559–62 *post*.

It is provided, however, that no annual assignment need be greater than is necessary to bring the accumulated total of the famine relief fund up to the amount specified below. The annual assignment provided for in the budget of a province must not be spent except upon the relief of famine. But if any portion of the assignment is not so spent, it is to be transferred to the famine relief fund of the province. The local Government, in making provision in its budget for the annual assignment, must include in demands for grant such portion of the assignment as is proposed to be spent on the relief of famine. The balance required to make up the total of the annual assignment must be transferred to the famine relief fund. The famine relief fund will consist of (*a*) the amount outstanding at the credit of the famine insurance fund[1] maintained till 1928–29, and (*b*) the unspent balances of the annual assignments for each year transferred to the fund, together with any interest which may accrue on these balances and any recoveries of interest and principal in respect of loans granted to cultivators under this Schedule. The local Government may in any year suspend temporarily the provision of the annual assignment 'when the accumulated total of the famine relief fund of the province is not less than the amount specified below':—

	Rs.
Madras	40,00,000
Bombay	75,00,000
Bengal	12,00,000
United Provinces ...	55,00,000
Punjab	20,00,000
Bihar and Orissa ...	15,00,000
Central Provinces ...	45,00,000

[1] Till the end of the financial year 1928–29 the fund was known as the famine insurance fund. See foot-note 4 on page 483.

The famine relief fund must form part of the general balances of the Government of India which 'must pay at the end of each year interest on the average of the balances held in the fund on the last day of each quarter.' Such interest must be credited to the fund. The local Government may at any time spend the balance at its credit in the fund upon the relief of famine. *Under certain conditions*[1] the excess balance [2] in the famine relief fund may be spent for other purposes; e.g., protective irrigation works, the grant of loans to cultivators, etc. . . . If any doubt arises as to whether the purpose for which it is proposed to spend any portion of the annual assignment or the famine relief fund or the excess balance thereof is one of the purposes specified in this Schedule, the decision of the Governor thereon will be final.

Provincial borrowing.

As has already been stated, the provincial Governments in India had no power of borrowing before the Reforms, because they 'possessed no separate resources on the security of which they could borrow.' The authors of the Joint Report felt, however, that, if the provincial Governments were to enjoy such real measure of independence as would enable them to pursue their own development policy, they must be given some powers, however limited, of raising loans.[3] Section 30(1*a*) of the Government of India Act has made provision to this effect. It empowers a local Government to raise, on behalf and in the name of the Secretary of State in Council, money on the security of the revenues allocated to it, and to make proper assurances for that purpose, and provides for the framing of Rules relating to the conditions under which this power of borrowing may be exercised.

Under the existing Local Government (Borrowing) Rules,[4] a local Government may raise loans on the

[1] See App. B, Schedule IV, cl. 8.
[2] See *Ibid.*
[3] Joint Report, para. 111.
[4] See Appendix C.

security of its revenues for certain purposes.[1] But it cannot raise any such loan 'without the sanction (in the case of a loan to be raised in India) of the Governor-General in Council, or (in the case of a loan to be raised outside India) of the Secretary of State in Council.' The Governor-General in Council or the Secretary of State in Council, as the case may be, may, in sanctioning the raising of a loan, specify the amount of the issue and the conditions under which it can be raised. Every application for the sanction of the Secretary of State in Council must be forwarded through the Governor-General in Council.

Every loan raised by a local Government is a charge on the whole of its revenues, and all payments in connection with it have priority over all other charges of the local Government except—

(1) its contribution (if any)[2] to the Government of India,

(2) the interest payable by it on advances made to it by the Government of India, and

(3) the interest due on all loans previously raised by it.

Provincial taxation.

Before the introduction of the Reforms, the provincial Governments could not impose any tax without the sanction of the Government of India. The authors of the Joint Report proposed that some means of enlarging the taxing powers of the local Governments must, if possible, be found.[3] They advised that the best means of freeing the provincial Governments in this respect would be to schedule certain subjects of taxation as reserved for the provinces, and to retain the residuary powers in the hands of the Government of India, with whom

[1] See Appendix C.

[2] The provincial contributions have been abolished with effect from 1928–29. See page 480 *ante*.

[3] The Joint Report, para. 110

would rest the ultimate responsibility for the security of the country.[1] Accordingly, it has been provided by Rules[2] made under the Government of India Act as follows :—

The Legislative Council of a province may, without the previous sanction of the Governor-General, make and take into consideration any law imposing, for the purposes of the local Government, any tax included in Schedule I below. It may also, without the previous sanction of the Governor-General, make and take into consideration any law imposing, or authorizing any local authority to impose, for the purposes of such local authority, any tax included in Schedule II below. It is open to the Government of India to make, at any time, any addition to the taxes enumerated in Schedules I and II referred to above.

SCHEDULE I

1. A tax on land put to uses other than agricultural.
2. A tax on succession or on acquisition by survivorship in a joint family.
3. A tax on any form of betting or gambling permitted by law.
4. A tax on advertisements.
5. A tax on amusements.
6. A tax on any specified luxury.
7. A registration fee.
8. A stamp duty other than duties of which the amount is fixed by Indian legislation.

SCHEDULE II

(In this Schedule the word 'tax' includes a cess, rate, duty or fee.)

1. A toll.
2. A tax on land or land values.

[1] The Joint Report, para. 210.
[2] See Appendix E for the Scheduled Taxes Rules. See also Section 80A (3) of the Act.

3. A tax on buildings.
4. A tax on vehicles or boats.
5. A tax on animals.
6. A tax on menials and domestic servants.
7. An octroi.
8. A terminal tax on goods imported into, or exported from, a local area in which an octroi was levied on or before July 6, 1917.
9. A tax on trades, professions and callings.
10. A tax on private markets.
11. A tax imposed in return for services rendered, such as—
    (*a*) a water rate ;
    (*b*) a lighting rate ;
    (*c*) a scavenging, sanitary or sewage rate ;
    (*d*) a drainage tax ;
    (*e*) fees for the use of markets and other public conveniences.

It may be noted in this connection that action has already been taken by several provincial Governments under the powers conferred on them by the Scheduled Taxes Rules.[1]

Conclusion.

In conclusion, we may state here that the financial position of the provincial Governments should be further improved and their solvency secured, if necessary, by a redistribution[2] of the heads of revenue and expenditure between them and the central Government : and that the provincial Governments should be vested with far more extensive powers of taxation and with a more unfettered authority to borrow money on the security of their revenues. The existing restrictions on their borrowing powers have been imposed in order, it is said, to prevent harmful competition with the Government of India in the

[1] See Appendix E for the Scheduled Taxes Rules. See also Section 80A (3) of the Act. [2] See Appendix U in this connexion.

loan market. But such restrictions are incompatible with provincial autonomy. In Canada, the legislature of each province can make laws 'in relation to the borrowing of money on the sole credit of the province.'[1] If it is argued, however, that such provincial laws may be disallowed by the Governor-General of Canada in Council and, therefore, the borrowing powers of the provinces in Canada are really limited and subject to the control of the central Government, it may be said in reply that, since the Governor-General of India can veto any provincial Act, the provincial legislatures here should be allowed to make laws empowering the local Governments to borrow money on the security of their revenues, and that the existing restrictions on their borrowing powers should be removed. In the United States also, the central Government cannot exercise any control over the borrowing powers of the State Governments. There are, however, some restrictions on the borrowing powers of the State legislatures, but they have been imposed by the State Constitutions, and not by the central Government.[2]

[1] See Section 92 of the British North America Act, 1867.
[2] Bryce, *American Commonwealth*, vol. i, p. 530.

CHAPTER XXIV

THE JUDICIARY[1] AND THE ECCLESIASTICAL ESTABLISHMENT

The High Courts in India and the Privy Council—Constitution of the Judicial Committee of the Privy Council—Constitution of High Courts—Provision for vacancy in the office of Chief Justice or any other Judge—Salaries, etc. of Judges of High Courts—Jurisdiction of High Courts—Exemption from jurisdiction of High Courts—Certain acts to be misdemeanours—Judicial Commissioners—Subordinate Judiciary: Inferior Criminal Courts—Inferior Civil Courts—Juries and Assessors—Advocate-General—Ecclesiastical Establishment—Salaries and allowances of Bishops, etc.

The High Courts in India and the Privy Council.

In a previous chapter we have dealt with the functions of the High Courts in India as interpreters of our Constitution and shown how they guard against legislation inconsistent with it. But they are not the final interpreters of the Constitution like the Supreme Court of the United States in America. An appeal from the decision of a High Court on a matter which concerns the interpretation of the Constitution may be made to the Judicial Committee of the Privy Council. The Privy Council is also the Supreme Court of Appeal in respect of certain other classes of Indian cases. According to *The Imperial Gazetteer of India*,[2] 'in civil matters an appeal at present lies (*a*) from a final decree passed on appeal by a High Court or other court of final appellate jurisdiction; (*b*) from a final decree passed by a High Court in the exercise of its original jurisdiction; and (*c*) from any other decree, if the case is certified by the

[1] For a short history of the Judiciary in India see *The Imperial Gazetteer of India*, vol. iv, pp. 142-46; see also Ilbert's *Government of India* (1916), pp. 268-73.
[2] Vol. iv, p. 152.

High Court to be fit for appeal to the Privy Council. In the first two cases the value of the subject-matter of the suit in the court of the first instance must be Rs. 10,000 or upwards . . . and, when the decree (of a High Court) appealed from affirms the decision of the court immediately below, the appeal must also involve some substantial question of law. In criminal cases a right of appeal is given—subject to the opinion of the High Court that the case is a fit one for appeal—from any judgment, order, or sentence of a High Court made in the exercise of original jurisdiction, or in any criminal case where a point of law has been reserved for the opinion of the High Court.' Apart from these conditions, the Crown has the prerogative 'to give special leave to appeal.'[1] The Judicial Committee of the Privy Council now consists[2] of the Lords of Appeal in Ordinary; of such members of the Privy Council as hold, or have held, high Judicial office;[3] of two other Privy Councillors if appointed by the Crown; and 'of one or two former Indian or colonial judges appointed for the purpose.'

Constitution of the Judicial Committee of the Privy Council.

Though the number of the members of the Committee is thus large, only four of its members need be actually present when a case is heard.[4] Every decision of the Committee is submitted in the form of 'advice to the Crown' and 'must bear the appearance at least, of unanimity.'[5]

It may be mentioned here that, suggestions have been made by many Indian statesmen that, since India is 'marching towards Responsible Government,' it should have, before long, a Supreme Court of Appeal of its own.[6]

[1] *The Imperial Gazetteer*, vol. iv, p. 152.
[2] Lowell, *Government of England*, vol. ii, pp. 466-67.
[3] In the United Kingdom, or (not exceeding seven in number) in the Dominions.
[4] See Ogg's *Governments of Europe*, p. 175.
[5] See *Ibid.*
[6] See Sir Tej Bahadur Sapru, *The Indian Constitution*, pp. 145-51. The Nehru Committee has also recommended the establishment of a Supreme Court in India.

The establishment of such a Court will not be, it is held, incompatible with the continuance of India's connection with Britain.[1] Nor will it in any way affect the Crown's prerogative to grant leave to appeal to the Privy Council. What is really contemplated is that the right of appeal to the Privy Council will be limited, in the event of the establishment of a Supreme Court, only to certain special classes of cases.

Constitution of High Courts.

There are at present High Courts in Bengal, Madras, Bombay, the United Provinces,[2] Bihar and Orissa, Burma and the Punjab. They have been established by Letters Patent issued by the Crown under the authority of Parliamentary enactments. The Crown is also empowered to establish by Letters Patent additional High Courts, if necessary, and confer on them 'any such jurisdiction, powers and authority as are vested in or may be conferred' on any of the existing High Courts.[3] The Indian Legislature has power, with the previous approval of the Secretary of State in Council, to make a law abolishing[4] any High Court.

Each High Court is to consist[5] of a Chief Justice and as many other Judges as the Crown may, subject to what follows, think fit to appoint. The maximum number of Judges of a High Court, including the Chief Justice and the additional Judges, if any, who may be appointed by the Governor-General in Council for a temporary period not exceeding two years, is fixed at twenty.[6] A Judge of a High Court must be[7] (*a*) a barrister of England or Ireland,

[1] See in this connection Section 73 of the Commonwealth of Australia Constitution Act, 1900, and also Section 106 of South Africa Act, 1909.

[2] The High Court in the United Provinces is styled the High Court of Judicature at Allahabad.

[3] Section 113 of the Act.

[4] Section 65 (3) of *ibid.*

[5] Section 101 (2) of *ibid.*

[6] Section 101 (2) of *ibid.*

[7] Section 101 (3) of *ibid.*

or a member of the Faculty of Advocates of Scotland, of not less than five years' standing ; or (*b*) a member of the Indian Civil Service of not less than ten years' standing, and having for at least three years served as, or exercised the powers of, a District Judge ; or (*c*) a person having held judicial office, not inferior to that of a Subordinate Judge or a Judge of a Small Cause Court, for a period of not less than five years ; or (*d*) a person who has been a pleader of a chartered High Court, or of any Court[1] which is a High Court within the meaning of Section 3 (24) of the General Clauses Act, 1897, for an aggregate period of not less than ten years. At least one-third of the Judges of a High Court, including the Chief Justice,[2] but excluding additional Judges, must be 'such barristers or advocates as aforesaid,' and at least one-third must be members of the Indian Civil Service. The Chief Justice of a High Court has rank and precedence before the other Judges of the same Court. All the other Judges have rank and precedence 'according to the seniority of their appointments, unless otherwise provided in their patents.' Every Judge of a High Court holds his office during the pleasure of the

[1] I.e., a Chief Court or the Court of a Judicial Commissioner.

[2] Section 101 (4) of the Act. Under this Section the Chief Justice of a High Court, according to one interpretation, must be a barrister. 'The position is,' to quote Sir Tej Bahadur Sapru, 'that an Indian Vakil Judge may officiate as Chief Justice, but he cannot be confirmed. Some of the most eminent Indian Judges like the late Sir Ashutosh Mukherjee, Sir Subramania Aiyar, Sir Narayan Chandavarkar, Sir Pramada Charan Banerjee have officiated as Chief Justices, but . . . they could not be confirmed'.—*The Indian Constitution*, p. 142. But according to another interpretation, the Chief Justice need not be a barrister. Under it, 'one-third of the judges of a High Court must be barristers. . . . . . The words "including the Chief Justice" were intended merely to indicate that, in calculating the one-third, the Chief Justice must be included in the total to be divided by three. By a wresting of the words from their obvious significance, a rule has sprung up that the Chief Justice must always be a barrister and never a mere Civilian or, still less, a Vakil.'—London Correspondent's letter, dated August 16, 1928, to the *Statesman*.

Crown.[1] He may resign his office, in the case of the High Court at Calcutta, to the Government of India, and in other cases to the local Government.[2] In England the Judges of the High Court of Justice and of the Court of Appeal hold office during good behaviour. They can, however, be removed from office by the Crown on an address presented by both Houses of Parliament. 'This means,' says Mr. Maitland,[3] 'that a judge cannot be dismissed except either in consequence of a conviction for some offence, or on the address of both houses.' This restriction on the power of dismissal of Judges is regarded as essential to their independence, and thus it acts as a great constitutional safeguard against executive interference with the administration of justice. In the Dominion of Canada also, the Judges of the Superior Courts hold office during good behaviour, but, as in England, can be removed by the Governor-General 'on address of the Senate and House of Commons.'[4]

Provision for vacancy in the office of Chief Justice or any other Judge.

If a vacancy occurs in the office of Chief Justice of a High Court, and during the absence of such a Chief Justice, the Governor-General in Council in the case of the High Court at Calcutta, and the local Government in other cases, must appoint one of the other Judges of the same High Court to act as Chief Justice, until some person is appointed by the Crown to the office and enters on the duties of that office, or until the Chief Justice returns from his absence, as the case may be.[5] And if a vacancy occurs in the office of any other Judge of a High

[1] Section 102 of the Act.
[2] *Ibid.*
[3] *The Constitutional History of England*, p. 313.
[4] Section 99 of the British North America Act, 1867; see also Section 72 of the Commonwealth of Australia Constitution Act, 1900, and Section 101 of South Africa Act, 1909.
[5] Section 105 (1) of the Act.

Court, and during the absence of any such Judge, or on the appointment of any such Judge to act as Chief Justice, the Governor-General in Council in the case of the High Court at Calcutta, and the local Government in the case of any other High Court, may appoint a duly qualified person to act as a Judge of the Court.[1]

Salaries, etc., of Judges of High Courts.

The Secretary of State in Council is empowered[2] to fix the salaries, allowances, furloughs, retiring pensions and, where necessary, expenses for equipment and voyage of the Chief Justices and other Judges of the several High Courts, and also to alter them. But no such alteration can affect the salary of any Judge who has already been appointed. The remuneration fixed for a Judge cannot be diminished or increased during his continuance in office.[3] If a Judge of a High Court dies during his voyage to India, or within six months of his arrival in India, the Secretary of State is required[4] to pay to his legal personal representatives such a sum of money out of the revenues of India 'as will, with the amount received by or due to him at the time of his death on account of salary, make up the amount of one year's salary.' And if he dies after the expiration of six months from his arrival in India, the Secretary of State must pay, out of the same revenues, to his legal personal representatives a sum equal to six months' salary, in addition to the sum due to him at the time of his death.[5] These provisions are obviously meant for the benefit of the English lawyers who are sent out from England as Judges.

The jurisdiction of every High Court has been defined by Letters Patent. The Letters Patent may be amended from time to time by the Crown by further Letters Patent. Each

[1] For further details see Section 105 (2) of the Act.
[2] Section 104 of *ibid.*
[3] *Ibid.*
[4] *Ibid.*
[5] *Ibid.*

High Court is a court of record and has[1] 'such jurisdiction, original and appellate, including admiralty jurisdiction in respect of offences committed on the high seas, and all such powers and authority, over or in relation to the administration of justice including power to appoint clerks and other ministerial officers of the Court, and power to make rules for regulating the practice of the Court, as are vested in it by Letters Patent.' It cannot, however, exercise any original jurisdiction in any matter 'concerning the revenue, or concerning any act ordered or done in the collection thereof, according to the usage and practice of the country or the law for the time being in force.'[2]

Jurisdiction of High Courts

Each High Court has superintendence over all courts for the time being subject to its appellate jurisdiction, and is empowered to[3]—

Powers of High Courts with respect to subordinate Courts.

(1) call for returns;

(2) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction;

(3) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts;

(4) prescribe forms in which books, entries and accounts are to be kept by the officers of any such courts; and

(5) settle tables of fees to be allowed to the sheriff, attorneys, clerks and officers of the courts.

But these rules, forms and tables must not be inconsistent

[1] Section 106 (1) of the Act. See Ilbert's *Government of India* (1916), pp. 268-73.

[2] Section 106 (2) of the Act. See Ilbert's *Government of India* (1916), p. 273.

[3] Section 107 of the Government of India Act.

See in this connection *The Imperial Gazetteer of India*, vol. iv, p. 149.

with the provisions of any law for the time being in force, and must require the previous approval, in the case of the High Court at Calcutta, of the Governor-General in Council, and, in other cases, of the local Government.[1]

Rules may be made by each High Court providing for the exercise, by one or more Judges, or by Division Courts constituted by two or more Judges, of the Court, of its original and appellate jurisdiction.[2] The Chief Justice of the Court has to determine what Judge in each case is to sit alone, and what Judges of the Court, whether with or without the Chief Justice, are to constitute the several Division Courts.[3]

The Governor-General in Council may,[4] by order, transfer any territory from the jurisdiction of one to that of any other High Court, and empower any High Court to exercise jurisdiction in any part of British India not included within the limits for which it was established, and also to exercise jurisdiction over any British subject for the time being within any part of India outside British India. Such an order may, however, be disallowed by the Crown.[5]

Exemption from jurisdiction of High Courts.

As has been stated before, the highest officials[6] and Ministers in India are exempted from the original jurisdiction of any High Court in respect of anything counselled, ordered or done by any of them in his public capacity; from liability to

[1] Proviso to Section 107 of the Act.
[2] Section 108 of the Act.
[3] *Ibid.*
[4] Section 109 of the Act.
[5] And the disallowance will take effect only from the day of its notification by the Governor-General.
[6] I.e., the Governor-General, Governors, Lieutenant-Governors, Chief Commissioners and Executive Councillors. It is not clear from the Government of India Act whether or not these officials can be sued in the Court of India for private debts. In the absence of anything to the contrary, we may presume that they can be sued for private debts. The Governor-General of a self-governing Dominion can be sued in the Courts of the Dominion for such debts as if he were not Governor-General. (See Prof. Keith's *Responsible Government in the Dominions*, 1909, p. 33.)

arrest or imprisonment in any suit or proceeding in any High Court acting in the exercise of its original jurisdiction ; and from the original criminal jurisdiction of any High Court in respect of any offence other than treason or felony.[1] This exemption from liability to arrest and imprisonment extends also to the Chief Justices and other Judges of the several High Courts. The written order of the Governor-General in Council for any act is, in any proceeding, civil or criminal, in any High Court acting in the exercise of its original jurisdiction, a full justification[2] of the act, except in so far as the order extends to any European British subject. But 'the Governor-General, or any member of his Executive Council, or any person acting under their orders', is not exempted from any proceedings in respect of any such act before any competent court in England. Again, if any person holding office under the Crown in India does any of the following things, he will be guilty[3] of a misdemeanour :—

Certain Acts to be misdemeanours

(1) oppression of any British subject within his jurisdiction or in the exercise of his authority ;

(2) wilful disobedience or neglect of the orders or instructions of the Secretary of State ;

(3) wilful breach of the trust and duty of his office ;

(4) trading for the benefit either of himself or of any other person, otherwise than as a shareholder in any joint-stock company or trading corporation ; and

(5) receiving of presents except in accordance with such rules as may be made by the Secretary of State as to the receipt of presents.

But if any member of the central Executive Council or any member of any local Government was concerned or engaged in any trade or business at the time of his

[1] See Section 110 of the Act. See p. 349, footnote 1.
[2] Section 111 of *ibid.*
[3] Section 124 of the Act.

appointment, he may, during the term of his office, with the sanction of the Governor-General or, in the case of Ministers, of the Governor, and in any case subject to such general conditions as the Governor-General in Council may prescribe, retain his concern or interest in the trade or business, but cannot, during that term, take part in its direction or management.[1]

If any European British subject, without the sanction of the Secretary of State in Council or of the Governor-General in Council, or of a local Government, is concerned in any loan to a Prince or Chief in India, he will be guilty of a misdemeanour.[2] The carrying on by any person of any illicit correspondence, dangerous to the peace or safety of any part of British India, with any Prince or with any other person having authority in India, is also a misdemeanour.[3] Any person suspected of carrying on any such correspondence may be secured and detained in custody under a warrant issued by the Governor-General or a Governor.

Any of the aforesaid offences may, without prejudice to any other jurisdiction, be tried and 'determined' before His Majesty's High Court of Justice in England.[4] Every prosecution before a High Court in British India in respect of any of those offences must be commenced within six months of its commission.[5]

Judicial Commissioners.

Judicial Commissioners are appointed by the Government of India for those parts of British India which are outside the jurisdiction of the chartered High Courts or Chief Courts.[6] They exercise in respect of all courts subject to their appellate jurisdiction the same powers of revision and supervision

[1] See Section 124 of the Act.
[2] See Section 125 of the Act.
[3] See Section 126 of the Act.
[4] Section 127 of *ibid.*
[5] Section 128 of *ibid.*
[6] See *The Imperial Gazetteer*, vol. iv, p. 147; also Ilbert's *Government of India* (1916), p. 163. At present only Oudh has a Chief Court.

as the High Courts do with respect to the courts subordinate to them.[1] They derive their authority from various Indian enactments. There are Judicial Commissioners[2] in the Central Provinces, North-West Frontier Province, Coorg, Sind and Baluchistan. The province of Assam is under the jurisdiction of the Calcutta High Court.

Subordinate Judiciary: Inferior Criminal Courts.

Every province—outside a presidency town[3]—is divided into a number of sessions divisions, each comprising one or more districts.[4] For every sessional division the local Government is required to establish a court of sessions, and to appoint a Sessions Judge and also, if necessary, Additional and Assistant Sessions Judges. A court of sessions is competent to try all persons who have been duly committed to it and to inflict any punishment that may be allowed by law. But every sentence of death passed by it must be confirmed by 'the highest court of criminal appeal in the province.' Below the court of sessions there are the courts of magistrates, which are divided again into three classes,[5] first, second, and third.

Inferior Civil Courts.

The constitution, jurisdiction and procedure of the inferior civil courts in each province are as provided by special Acts or Regulations.[6] The subordinate civil courts, as constituted in the different provinces, are essentially identical, though they differ in respect

[1] See *The Imperial Gazetteer*, vol. iv, p. 147; also Ilbert's *Government of India* (1916), p. 163.

[2] *The Fifth Decennial Report*, p. 75; also *The Indian Year Book, 1927, and Whitaker's Almanack, 1928.*

[3] *The Imperial Gazetteer*, vol. iv, p. 147.

[4] See *The Imperial Gazetteer*, vol. iv, pp. 147–48.

[5] 'From a conviction by a second or third-class magistrate an appeal lies to the District Magistrate or to any specially empowered first class magistrate; and, subject to certain limitations, original convictions by magistrates of the first-class are appealable to the Sessions Judge, whose own original convictions are in turn appealable to the highest court in the Province.'—*The Imperial Gazetteer*, vol. iv, p. 149.

[6] *The Imperial Gazetteer*, vol. iv, p. 149.

of certain details.[1] The usual arrangement is that for each district or group of districts there is a District Judge who also generally exercises criminal jurisdiction as a Sessions Judge.[2] Next to the District Judge there are Subordinate Judges; and below them come Munsifs, who preside over the lowest courts.

Juries and assessors.

Criminal cases are tried in the High Courts with the aid of jurors. Trials before courts of sessions are conducted with the help either of jurors or of assessors, as the local Government concerned may direct.[3] The assessors 'assist, but do not bind, the Judge by their opinions.' In the case of a trial by a jury before a court of sessions, the Sessions Judge is required by law, if he considers that the jury has returned a 'manifestly wrong verdict,' to submit the case to the High Court, which can set aside or modify the finding of the jury.[4]

Advocate-General.

An Advocate-General for each of the presidencies of Bengal, Madras and Bombay is appointed by the Crown.[5] He is empowered to take on behalf of the Crown such proceedings as are taken by the Attorney-General in England.[6] The Advocate-General of Bengal is also the principal Law Officer of the Government of India. If a vacancy occurs in the office of Advocate-General, or during the absence of an Advocate-General, the Governor-General in Council in the case of Bengal, and the local Government in other cases, may appoint a person to act as Advocate-General until some person is appointed by the Crown to the office, or until the Advocate-General returns from his absence, as the case may be.[7]

[1] *The Imperial Gazetteer*, vol. iv, p. 149.
[2] See Ilbert, *Government of India* (1916), p. 163.
[3] *The Imperial Gazetteer*, vol. iv, pp. 148–149.
[4] *Ibid.*
[5] Section 114 of the Act.
[6] *Ibid.* [7] *Ibid.*

Ecclesiastical establishment.

The ecclesiastical establishment is maintained primarily for the purpose of providing 'the ministration of religion for British-born European servants of the Crown, and specially for soldiers and their families.' [1] The total amount spent on this establishment in the year 1926–1927 was about 32·5 lakhs of rupees.[2] The entire expenditure on the ecclesiastical department is non-votable. The Bishops of Calcutta, Madras and Bombay are appointed by the Crown by Letters Patent.[3] They are paid out [4] of the revenues of India such salaries and allowances as may be fixed by the Secretary of State in Council. Besides, they are paid, out of the same revenues, such 'expenses of visitations' as may be allowed by the Secretary of State in Council.

Salaries and allowances of Bishops, etc.

If the Bishop of Calcutta dies during his voyage to India, or if the Bishop of Calcutta, Madras or Bombay dies within six months of his arrival in India, the Secretary of State is required to pay to his legal personal representatives such a sum of money out of the revenues of India 'as will, with the amount received by or due to him at the time of his death on account of salary, make up the amount of one year's salary.' [5] And if he dies after the expiration of six months from his arrival in India, the Secretary of State must pay to his legal personal representatives a sum equal to six months' salary out of the same revenues, in addition to the amount due to him at the time of his death.[6] The Government of India Act has also provided for the payment of

[1] *Vide Report of the Indian Retrenchment Committee*, 1922–23, p. 269.

[2] This amount was exclusive of the amount of Rs. 6·7 lakhs spent on the ecclesiastical establishment in the Army Department.—*Finance and Revenue Accounts of the Government of India for the year 1926–27*, pp. 344 and 510.

The legitimacy of this item of expenditure is open to question.

[3] Section 118 of the Act.

[4] *Ibid.*

[5] Section 119 of the Act.

[6] *Ibid.*

pensions to the retired Bishops.[1] The expenditure [2] on the three Bishops and their establishments excluding the Chaplains and Archdeacons under them, was about Rs. 1,50,000 in 1922–23.[3]

There were in 1922–23 as many as 161 Chaplains of the Church of England, maintained by the Government of India.[4] Besides, the Government maintained eighteen Chaplains of the Church of Scotland.[5]

The Bishop of Calcutta is the Metropolitan Bishop in India and exercises such ecclesiastical jurisdiction and functions as the Crown may direct by Letters Patent.[6] He is subject to the 'general superintendence and revision' of the Archbishop of Canterbury. The Bishops of Madras and Bombay are 'subject' to the Bishop of Calcutta and must, either at the time of their appintment or at the time of their consecration as Bishops, take an oath of obedience to him, in such manner as the Crown may direct by Letters Patent.[7]

The Governor-General in Council may[8], with the sanction of the Secretary of State in Council, grant 'to any sect, persuasion or community[9] of Christians, not being of the Church of England or Church of Scotland, such sums of money as may be expedient for the purpose of instruction or for the maintenance of places of worship'.

[1] Section 120 of the Act.
[2] *Report of the Indian Retrenchment Committee*, p. 272.
[3] In 1926–1927 this expenditure was about Rs. 1·716 lakhs.—*Finance and Revenue Accounts of the Government of India for the year 1926-27*, p. 244.
[4] See *Report of the Indian Retrenchment Committee, 1922-23*, p. 271 and also p. 268.
[5] Also allowances were granted to Roman Catholic priests.
[6] Sec. 115 of the Act. [7] *Ibid.*
[8] Section 123 of the Act.
[9] E.g., To Roman Catholic and Wesleyan priests.

CHAPTER XXV [1]

THE REFORMS SCHEME IN OPERATION

Lord Chelmsford on the Reforms—Working of the Reforms : in the sphere of the central Government—In the sphere of the provincial Government—How 'dyarchy' has been worked : it has not had a fair trial—The principle of joint deliberation, not always observed—One of the inherent defects in dyarchy—Relations between Ministers and the public services—The English system—Relations between Governors and Ministers—Official *bloc* incompatible with ministerial responsibility—Collective responsibility of Ministers, not much encouraged—Relations between Ministers and the Finance Department, not very happy—System of separate purse, how far desirable—Parliament and the administration of Transferred subjects—Statutory Commission—Its personnel—Conclusion.

We have in the preceding chapters attempted to describe the constitutional system established under the Government of India Act. We have also, in the course of our description, pointed out some of its defects and anomalies, specially as experienced in the actual working of the system. We now propose to close this volume with a general survey of its operation during the last eight years.

Lord Chelmsford on the Reforms.

'For the first time the principle of autocracy which had not been wholly discarded in all earlier reforms was definitely abandoned ; the conception of the British Government as a benevolent despotism was finally renounced ; and in its place was substituted that of a guiding authority whose rôle it would

[1] The earlier portion of this chapter was originally written in January, 1925. As the criticisms of the Reforms Scheme made therein are still mostly applicable, it has been retained in this edition only with minor alterations. This will explain its manner of treatment.

be to assist the steps of India along the road that in the fulness of time would lead to complete self-government within the Empire.' These were the words in which Lord Chelmsford stated in 1921, in the course of his inaugural address to the first reformed Legislature of India, the underlying principles of the Reforms. How one would wish that these principles, so beautifully expressed by the ex-Viceroy, had been uniformly followed in practice in the succeeding years! Although it is really difficult to deny that there have been provocations, sometimes of the gravest character, given by the people and their representatives, yet one could have certainly expected a little more forbearance in those on whom devolved the task of giving effect to those underlying principles as explained by Lord Chelmsford. But, at the same time, we must say that we cannot agree with his Lordship that the Constitution, at the inauguration of which he made the statement quoted above, and in the framing of which he played so prominent a part, has definitely abandoned the principle of autocracy. The powers of 'certification,' of 'restoration,' of 'authorization,' as well as the power of making 'Ordinances,' vested in the different ruling authorities by the Government of India Act, are undeniable proofs of the existence of the elements of autocracy in the Constitution. Nor, again, can it be said that the mechanism of the central Government has been constructed according to the principles of democracy. Face to face with a Legislature consisting of two Houses, each having an elected majority, has been set up an irremovable and irresponsible Executive Government invested, subject, of course, to the ultimate control and direction of the Home Government, with a decisive power in respect of every question of Indian administration. The result has been, as should have been anticipated by the authors of the Constitution in such

Working of the Reforms: in the sphere of the central Government.

circumstances, dissensions between the Executive and the Legislature. The history of the working of the central Government during the last eight years is full of bickerings between them. The Executive, having power, has come out apparently triumphant from these quarrels ; the Legislature, lacking it, has used, on most occasions, whatever influence it has had, to oppose and to obstruct the Executive. No Government can act in such circumstances with confidence, vigour and courage ; and no Legislature can help becoming irresponsible, before long, in such circumstances. Such a state of things is bound to continue unless the machinery of the central Government is radically altered. The remedy for these evils is the introduction of the principle of 'ministerial responsibility on the English pattern' into the central Government.

In the sphere of the provincial Government.

The 'dualized form of Government' which, as we have seen before, has been established in the major provinces of India is popularly known as 'dyarchy.' According to Mr. Curtis,[1] the word 'dyarchy' was first applied to this form of Government by Sir William Meyer, when the latter was the Finance Member of the Government of India. We propose in this chapter to say a few words about its working during the last eight years. It is not, however, our intention here to pronounce our judgment on dyarchy ; we shall only attempt to describe how it has been worked during the eight years it has been in operation.

At the very beginning, we must point out that it is extremely difficult to form any definite and correct conclusions as to how it has been worked in the various provinces.

[1] See *Dyarchy*, Introduction, p. xxxii. See also Appendix R *post.* The word 'dyarchy' is compounded of two Greek words signifying 'two' and 'government'.—See *ibid.*, p. 105. It means, according to the *Oxford English Dictionary*, Government by two rulers.

The data, that are available to the public regarding its working, are mostly unreliable. The mass of evidence that was placed before the Reforms Enquiry Committee[1] (1924) by the various witnesses who appeared before it was, for the greater part, hopelessly conflicting. For instance, what Mr. Harkishan Lal, an ex-Minister of the Punjab Government, had said about the working of dyarchy in his province when he had been a Minister, was contradicted [2] by Sir John Maynard, the then (1924–25) Finance Member of the Punjab Government, who had been a member of that Government since the introduction of the Reforms. Similarly, what Sir Chimanlal Setalvad, an ex-Executive Councillor of the Government of Bombay, had stated about the working of dyarchy in his province when he had been a member of the Government, was contradicted, [3] first, by Sir George (now Lord) Lloyd who had been, till 1923, Governor of Bombay, and, secondly, by Sir Maurice Hayward, the then (1924–25) Home Member to the Government of Bombay. But, in spite of the conflicting, and sometimes misleading, character of the statements made by some of the witnesses before the Reforms Enquiry Committee, certain conclusions in regard to the working of dyarchy in some of the provinces at least, are irresistible to those who have carefully studied the published evidence given by other witnesses and who have impartially followed the political history of India during the last eight years.

[1] The Committee was appointed by the Government of India and is popularly known as the Muddiman Committee after its President.

[2] See for the evidence of Mr. Harkishan Lal and Sir John Maynard, *The Statesman* (Dak edition) of August 16 and of October 22, 1924, respectively ; also App. No. 6 to the Report of the Reforms Enquiry Committee, 1924, vol. i (pp. 215–264) and vol. ii (pp. 284–348) respectively.

[3] See *The Statesman* (Dak edition) of October 23, of November 8, of December 4, of December 23, and of December 27, 1924. Sir George Lloyd's reply to Sir C. Setalvad was first published in *The Times*. See also App. 6 to the Report of the Reforms Enquiry Committee, 1924, vol. ii, pp. 349–380.

How 'dyarchy' has been worked: it has not had a fair trial.

First, it is difficult to deny that dyarchy has not had a fair trial since its introduction. The atmosphere created by the non-co-operation movement; the spirit of hostility to the Reforms engendered by it; the open preaching of the boycotting of the first elections held under the Reforms; the emergence of the Swarajist party with the destruction of the Reforms as its creed; the financial difficulties[1] of the provincial Governments; some of the measures, both administrative and legislative, adopted by the Governments, central and provincial; the attitude of some members of the civil services towards the Reforms and Ministers in some provinces; and the policy pursued by some of the Governors,—all these conspired as it were to make the smooth and successful working of the dyarchical system of Government practically impossible.

The principle of joint deliberation, not always observed.

Secondly, it appears from the evidence of some of the witnesses who were examined by the Reforms Enquiry Committee that the principle of joint deliberation between the two halves of the provincial Government under the chairmanship of the Governor, upon which so much stress had been laid by the Joint Select Committee and which was further emphasized by the Instrument of Royal Instructions issued to every Governor, had not been uniformly followed in practice in some provinces. For this the Governors of those provinces should be held responsible. They were directed by the Royal Instructions to encourage the habit of such joint deliberation. By failing to do so, they acted not merely against the wishes of the Crown, but against the underlying spirit of the Reforms also. Apart from the reasons set forth before in support of joint deliberation, such deliberation brings Ministers into touch

[1] See Appendix U in this connexion.

with the work of the Reserved departments, gradually familiarizes them with the needs of those departments and with considerations affecting their administration, and thus prepares the way 'for the assumption by Ministers of further responsibllity . . . as additional subjects are transferred, until the ultimate goal of complete responsibility' is attained.[1]

The habit of joint deliberation seems to have been encouraged both in Madras and Bengal. It is said that Lord Willingdon, who was till 1924 Governor of Madras, treated his 'entire Government as a unified Government.'[2] In dismissing the first Bengal Legislative Council Lord Lytton[3] is reported to have said as follows :—

'It has always been my practice since I assumed office to treat my Government as a whole. All questions of policy, whichever department may be responsible for them, are discussed at joint sittings, and I have no hesitation in saying that the practice has been fully justified by the results. I believe that by this means we have made as much progress as it was possible to make in the time towards a unified Cabinet which recognizes a responsibility towards the legislature for its acts.'

Both Mr. (now Sir) A. K. Ghuznavi and Mr. A. K. Fazl-ul-Huq, who had been Ministers in Bengal till September 1924, bore testimony, in their evidence[4] given before the Reforms Enquiry Committee, to the continuance of the above 'practice' when they had been Ministers.

In this connection we must point out one of the inherent defects in the dyarchical system of Government. The position [5] of the Minister in it is extremely difficult. Joint

[1] See Mr. Montagu's Memorandum on the Government of India Bill, p. 4.

[2] See Sir Tej Bahadur Sapru's *The Indian Constitution, A Note on Its Working*, Besant Press, Madras, p. 86.

[3] See *The Capital*, August 30, 1923.

[4] See *The Statesman* (Dak edition), October 14 and October 21, 1924.

[5] See on this point Dr. Pramatha Nath Banerjee's speech in the

deliberation between the two halves of the provincial Government is essential, as has been shown before, for more than one reason. It is specially necessary for ensuring unity of purpose in provincial administration, as, after all, the Government of a province is one, its different parts being closely inter-related. Now let us suppose that a certain decision is arrived at by a provincial Government after a free consultation between its two halves and that the decision relates to a matter under the Reserved side of the Government. The Transferred side does not approve of the decision. Let us next suppose that the action actually taken or proposed to be taken by the Reserved side on the basis of the decision already so reached, is strongly disapproved in the local Legislative Council. What then should be the attitude of the Ministers in the Council? The Joint Select Committee advised[1] that members of the Executive Council and Ministers should not oppose each other in the Legislative Council by speech or vote: and that they should not be required to support either by speech or vote proposals of each other of which they do not approve. The only course open to the Ministers in our supposed case, next to that of resignation, is to remain silent spectators of the scene that is enacted before them. They cannot conscientiously support the action in question in the Legislative Council; nor can they, without embarrassing their colleagues on the Reserved side, join the Council in its disapproval of the action. Their silence in such circumstances is bound to be misunderstood by the Council or, at least, by a considerable section of it. And this Council, it must be borne in mind, is their real master. Theoretically, they

One of the inherent defects in dyarchy.

Bengal Legislative Council.—*Bengal Legislative Council Proceedings*, February 18 and 20, 1924, vol. xiv, No. 2.

[1] The Joint Select Committee's Report on Clause 6 of the Government of India Bill.

hold office during the pleasure of the Governor; but in actual practice, they can retain office only so long as they can command the confidence of the Council. This, however, is not the case with their colleagues on the other side. Thus, in order to show loyalty to their colleagues on the Reserved side, the Ministers have to displease their master who grants their salaries, and prepare the way for their own dismissal. Really, the position of Ministers in the dyarchical system of Government is unenviable.

Relations between Ministers and the public services.

Our third conclusion in regard to the working of dyarchy is that in some provinces at least, the relations between Ministers and the officers of the public services working under them—particularly the Secretaries—have not been what they should have been. As a matter of fact, one ex-Minister [1] has gone so far as to say that the position of the Minister in his province 'was one of humiliation and irritation.' Orders passed by the Minister had been challenged by one of his subordinates. This attitude of insubordination on the part of officials working under Ministers may be attributed to two reasons principally. First, as we have shown before, under the Government of India Act and the Rules made thereunder, Ministers have practically no authority [2] over the members of the All-India

[1] Rao Bahadur N. K. Kelkar, ex-Minister of the Central Provinces; see *The Amrita Bazar Patrika* (Dak edition) of Ausust 13, 1924.

See also in this connexion paras. 70–87 of Rao Bahadur N. K. Kelkar's Memorandam to the Reforms Enquiry Committee, 1924; also App. 6 to the Report of the Committee, vol. i, p. 103.

[2] 'My proposals with regard to punishment, withholding of increments, pensions, etc., of Imperial Service officers were generally upset except in one or two cases. . . . Ministers can't enforce any disciplinary measures against such officers nor do the Ministers possess the power of posting such officers to places desired by them (Ministers). In all these matters my decisions or suggestions were on many occasions upset by the Governor either in deference to the wishes of the officers concerned or in deference to the opinions of

Services, from amongst whom the Secretaries, Under-Secretaries, etc., are generally recruited. Under Devolution Rule 10, even no order for the posting of an officer of an All-India Service can be made without the personal concurrence of the Governor. Secondly, under the rules of executive business framed by the Governor in each province, the Secretaries attached to the different departments of the provincial Government have the right of access to the Governor for bringing to his notice any case which they consider to be necessary for him to attend to personally. They have even, as appears from the evidence[1] of Mr. Harkishan Lal, an ex-Minister of the Punjab Government, 'the right of pre-audience with the Governor,' and thus have the opportunity of influencing him before Ministers can present their case. The Secretaries to the Government of India have, as has been seen before, similar right of access to the Governor-General. Whatever may be the advantages of this system, we cannot support its underlying principle. Moreover, the system is particularly indefensible in connection with the administration of the Transferred departments, because it is, as Professor Keith stated in his Minority Report,[2] 'incompatible with

the heads of the departments.'—Rao Bahadur N. K. Kelkar's Memorandum, (paras. 66 and 99)to the Reforms Enquiry Committee, 1924.

'If Ministers cannot be trusted even in the matter of transfers and posting, it would be simpler, more logical and more intelligible to dispense with them altogether.'—Mr. C. Y. Chintamani's Memo. to the Reforms Enquiry Committee, 1924, para. 32.

[1] See *The Statesman* (Dak edition) of August 16, 1924. *Vide* also the Report of the Reforms Enquiry Committee, 1924, App. 6, vol. i, p. 224.

In the Central Provinces, the Secretariat procedure is as follows :

'Any case may, at any stage, if the Secretary in the department to which the case belongs thinks fit, be submitted by him to the Governor :

Provided that when a case is so submitted to the Governor, the member or minister in charge shall be at once informed of the fact by the Secretary.'—Report of the Reforms Enquiry Committee, 1924, App. 5, p. 432.

[2] See the Crewe Committee's Report, p. 45, foot-note 2.

responsible government in any real sense.' Besides, there is another consideration. The members in charge of the Reserved departments in a province or the members of the Executive Council of the Governor-General are, together with the Secretaries working under them, responsible to the same authority, namely, the Secretary of State for India, for the administration of the subjects committed to their charge. They have, therefore, so to speak, a homogeneity of interests. But the case is entirely different with Ministers. The latter are responsible for the administration of the subjects entrusted to their charge not to the Secretary of State, but to the provincial Legislative Council. And it is they who will have to defend before the Council every action relating to those subjects. The final decision in respect of every important question, affecting those subjects should therefore rest with them so long as they would retain the confidence of that Council. It should be the duty of the officers of the public services serving under them to supply them with all necessary materials in order to enable them to arrive at a correct decision on a particular question; but the decision itself should be theirs. When the decision is once reached, it should be the further duty of those officers to give effect to it.

It may be mentioned here that, unlike the other members of Lord Chelmsford's Government, Sir C. Sankaran Nair apprehended the danger to the smooth and successful working of dyarchy, which might arise from the right of access of the Secretaries, working under Ministers, to the Governor. In a minute of dissent appended to the First Despatch of the Government of India on Indian Constitutional Reforms, he expressed his views on the question as follows[1] :—

'According to my colleagues, the permanent heads of departments and the secretaries under a minister should

[1] *Government of India's Despatch of March* 5, 1919, *and Connected Papers*, p. 97.

have access to the Governor to bring to his notice any case which they consider that the Governor should see. In fact, the secretary or the permanent head of a department would be entitled to appeal to the Governor against any decision of the minister overruling him. My colleagues also expect that the Governor would direct all cases of particular types and all cases of major importance to be brought to him as a regular practice. The result would naturally be to weaken considerably the position of the minister in relation to his subordinates. In fact, he might be reduced to a figure-head by the Governor and the secretary. I do not think that this could have been contemplated by the authors of the Reforms Report, and I do not think it right. No secretary or head of a department should have any access to the Governor for this purpose. No one should come between him and the minister. It is one thing for a Governor to tell the minister himself that he would like to be consulted on cases of a certain type, and it is a very different thing to allow a secretary to bring to him such cases for decision in appeal against a minister.'

The English system.

In England, the permanent Under-Secretary attached to a department of State has no such right of access to the Crown or to the Prime Minister over the head of the Minister in charge of the department. It may be said that the actual relations between a Minister and his Secretary depend very much on their personality. This is true to a certain extent. But where there are statutory limitations on the powers of the Minister in relation to his subordinates, mere personality of the Minister will not always help to make the relations between them such as they should be.

We may note here what President Lowell states[1] to be the theoretical relation between the political chief and his

[1] Lowell, *Government of England* (1919), vol. i, p. 182.

permanent subordinate in England. The function of the political chief, who furnishes the lay element in the concern, 'is to bring the administration into harmony with the general sense of the community and especially of Parliament. He must keep it in accord with the views of the majority in the House of Commons, and conversely he must defend it when criticised, and protect it against injury by any ill-considered action of the House. He is also a critic charged with the duty of rooting out old abuses, correcting the tendency to red tape and routine, and preventing the department from going to sleep or falling into ruts; and, being at the head, it is for him, after weighing the opinion of the experts, to decide upon the general policy to be pursued. The permanent officials, on the other hand, are to give their advice upon the questions that arise, so as to enable the chief to reach a wise conclusion and keep him from falling into mistakes. When he has made his decision, they are to carry it out; and they must keep the department running by doing the routine work. In short the chief lays down the general policy, while his subordinates give him the benefit of their advice, and attend to the details.'

If the ministerial system of Government is to be made a success in India, Ministers must have a full control over the officers of the public services under them.

Relations between Governors and Ministers.

Our fourth conclusion is that in some provinces, the Governors have tried to control their Ministers, to reduce them to the position of their mere advisers, and to concentrate power in themselves even in respect of the administration of the Transferred departments; and that often the Ministers in those provinces have been able to pursue their own policy only 'with the help of the weapon of resignation in the background.' In so acting, those Governors have violated the spirit, if not the letter, of the Constitution. Only in exceptional cases, the Governor is empowered

by the Act to take action otherwise than in accordance with the advice of his Ministers; ordinarily, he must let the Ministers have their way. The advice[1] of the Joint Select Committee on this question is very clear. 'Ministers who enjoy the confidence of a majority in their Legislative Council will be given the fullest opportunity of managing that field of government which is entrusted to their care. In their work they will be assisted and guided by the Governor, who will accept their advice and promote their policy whenever possible. If he finds himself compelled to act against their advice, it will only be in circumstances roughly analogous to those in which he has to override his Executive Council. . . .' The control of Ministers by the Governor and their responsibility to the Legislative Council are incompatible. As Rao Bahadur N. K. Kelkar, ex-Minister, Central Provinces, admitted, he had to please two masters, the Governor and the Legislative Council.[2] If the control by the Legislative Council of Ministers is to be made real and effective, the Governor's control over them must disappear, and he must occupy the position of a purely constitutional Governor like the Governor[3] in a self-governing Dominion. The present position is anomalous. The Governor interferes in the administration of the Transferred subjects, but he enjoys immunity from all criticism by the Legislative Council[4].

[1] The Joint Select Committee's Report on the Government of India Bill, para. 5.

[2] Report of the Reforms Enquiry Committee, 1924, App. 6, vol. i, p. 80; also App. 5, p. 413.

[3] The term 'Governor' has obviously been used here in a wide sense.

[4] As Mr. C. Y. Chintamani, ex-Minister, United Provinces, said:

'They (*i.e.*, the Governors of provinces) are not constitutional Governors as in the dominions and yet the Legislative Councils are forbidden to criticise them and their acts and omissions as if they were such, as if they had no personal responsibility for what their Governments do or fail to do, as if they always acted upon the advice of responsible Ministers. . . .'

'Either the Governor should be a "constitutional Governor" or he

Official *bloc* incompatible with ministerial responsibility.

Fifthly, the presence of the official *bloc* in each Legislative Council has tended to obscure the responsibility of Ministers to the Council. It has thus helped to weaken the control of Ministers by the Council. An unpopular Minister may, under the existing arrangement, continue in office and have all his demands for grants passed by the Council with the help of this 'silent official phalanx,' even though the majority of the elected members of the Council may have no confidence in him. Indeed, the official *bloc* and ministerial responsibility are irreconcilable. If responsible government is to be realized in the sphere of the Transferred side either the official *bloc*, as it is constituted now, must be forbidden to vote on any question relating to a Transferred subject, or provision must be made for its early disappearance.

Collective responsibility of Ministers, not much encouraged.

In the sixth place, it does not appear from the evidence placed before the Reforms Enquiry Committee that the principle of the collective responsibility of Ministers was recognized except in one or two provinces.[1] 'It was pointed out to us by a majority of the ex-Ministers whom we examined', say the authors of the Minority Report of the Reforms Enquiry Committee, 'that the Ministers were dealt with by their Governors individually and not collectively. In

should not by Rule be protected from criticism in the Council. At present his position in relation to the Council is one of power unaccompanied by responsibility and untempered by the knowledge that the manner of its exercise can form the subject of Council criticism. It is a position more privileged than that of any dominion Governor and of the King himself in Britain'—Paras. 9 and 23 of his Memo. to the Reforms Enquiry Committee, 1924.

[1] It appears from the evidence of Mr. Chintamani, an ex-Minister of the Government of the United Provinces, that he and his colleague, Pandit Jagat Narain, worked on the principle of joint responsibility. According to Sir Tej Bahadur Sapru, both of them tendered their resignations upon a difference arising between one of them and the Governor.

other words, the point raised was that there were Ministers but no Ministries.' This may be due to two reasons. First, except in those provinces,[1] there were, till recently, no well-organized parties in the provincial Legislative Councils. Speaking of the English Constitution, President Lowell has remarked that it is inconceivable that government by a responsible ministry should have appeared if Parliament had not been divided into Whigs and Tories. In fact, the whole plan would be senseless if parties did not exist.[2] But it may also be said that, if the principle of the joint responsibility of Ministers were once recognized and acted upon, it would have brought parties into existence and tended to perpetuate them. For 'the parliamentary system', to quote the same writer[3] again, 'like every rational form of government, reacts upon and strengthens the conditions of its own existence. It is based upon party, and by the law of its nature tends to accentuate party'. Secondly, the principle of the collective responsibility of Ministers has not received much encouragement from most of the Governors. It has transpired that in one province at least there was even no joint consultation between its two Ministers during the whole tenure of their office. Following the letter of the law, some Governors directed that each Minister should act on his own individual responsibility. It is true that the Government of India Act has made no clear[4] provision for the joint responsibility of Ministers. But it must be borne in mind that this is a

[1] E.g., in Madras all the first three Ministers were appointed from among the non-Brahmin members of the Legislative Council as the non-Brahmin party commanded a majority in the Council. 'In selecting the Ministers the Governor adopted the plan . . . of calling upon the leader of the party which had been returned to power by the general elections to make recommendations.'

[2] Lowell, *Government of England*, vol. i, p. 456.

[3] *Ibid.*, p. 457.

[4] Sub-section 3 of Section 52 of the Act is not very clear on this point.

matter which rests elsewhere e.g., in England, on mere conventions. Law has no direct concern with such matter there. Such conventions may be usefully built up also in our country. We may note here what the Joint Select Committee suggested[1] on this question :—

'. . . . They think that it should be recognized from the commencement that ministers may be expected to act in concert together. They probably would do so ; and in the opinion of the Committee, it is better that they should. . . . '

Again :

'The Committee think[2] it important that, when the decision is left to the Ministerial portion of the Government, the corporate responsibility of Ministers should not be obscured. They do not intend to imply that, in their opinion, in every case in which an order is passed in a transferred department, the order should receive the approval of all the Ministers : such a procedure would obviously militate against the expeditious disposal of business, and against accepted canons of departmental responsibility. But in cases which are of sufficient importance to have called for discussion by the whole Government, they are clearly of opinion that the final decision should be that of one or the other portion of the Government as a whole.'

Thus, although the joint responsibility of Ministers has not been definitely provided for by the Act, it was at least contemplated by the Joint Select Committee.

Lastly, we may observe that the relations between the Finance Department, which, by the way, is under Devolution Rule 36 (1), controlled by a member of the Executive Council, and Ministers have not been, in most of the

[1] The Joint Select Committee's Report on Clause 4 of the Government of India Bill.

[2] The Joint Select Committee's Second Report, p. 2.

provinces, as happy[1] as they should have been, and that this is partly responsible for the unpopularity of dyarchy. Complaints have been made by several ex-Ministers and other witnesses before the Reforms Enquiry Committee about the attitude of this department towards the Transferred side of the provincial Governments. It is quite possible that some of these complaints are groundless and may be attributed to an inadequate appreciation of the duties and responsibilities of the Finance Department of every Government in relation to its revenues and expenditure. As we have previously shown, this department is seldom popular in any country with the spending departments of the Government thereof because of the peculiar nature of its work. But, on the other hand, there is evidence of an unimpeachable character to prove that in some provinces[2] at least, the Finance Members have often shown a 'conscious bias' against Transferred departments; that the principle of 'charity begins at home'[3] has more influenced their attitude towards the two halves of the provincial Governments than considerations of equity and justice; that, in regard to proposals of new expenditure relating to Transferred subjects, they have been sometimes unduly strict in their interpretation of the rules of the Finance Department; and that they have often betrayed by their actions their inability to appreciate the difficulties of Ministers, who have had to carry a very critical majority with them. Some ex-Ministers have stated in their evidence before the Reforms Enquiry Committee that they had often

Relations between Ministers and the Finance Department, not very happy.

[1] It should be admitted here that there has been some improvement in the relations between the Finance Department and Ministers since the publication of the Report of the Reforms Enquiry Committee, 1924.

[2] See the Report of the Reforms Enquiry Committee, 1924, pp. 165–168.

[3] *Vide* Mr. C. Y. Chintamani's oral evidence before the Reforms Enquiry Committee, 1924.

had to use threats of resignation in order to have their way in financial matters. Certainly the system of Government under which it is necessary to employ such threats to carry on the administration is anything but sound.

It may also be noted here that Devolution Rule 36 (1), which lays down that the Finance Department in each Governor's province must be controlled by a member of the Executive Council, is, as Mr. C. Y. Chintamani, an ex-Minister of the United Provinces, has pointed out in his evidence,[1] a reflection upon Ministers. And it is difficult to say that the Rule, as it is, does not give 'an unfair initial advantage' to the Reserved side of the Government over its Transferred side, and that it does not operate to the disadvantage of Ministers.

Mr. (now Sir) A. K. Ghuznavi, an ex-Minister of the Government of Bengal, is of opinion[2] that on account of the 'minute and meticulous scrutiny by the Finance Department of the smallest technical details of each project, . . . ministers are only too often unable to carry through their schemes in the form approved by them and in which they are put by the heads of departments and other expert officers, who alone are in a position to judge as to the soundness or otherwise of such schemes.' He has suggested that the Rules relating to the Finance Department should be so amended as to limit its powers.

In order to avoid the inevitable financial conflict between the two halves of the provincial Government under the

[1] See *The Statesman* (Dak edition) of August 20, 1924. Rule 36 (1) 'is a reflection on Ministers and it gives an unfair initial advantage to the Governor in Council and Reserved subjects over the Ministers and Transferred subjects. Nor is the objection only theoretical and sentimental. Experience inside the Government on the Transferred side satisfied me that the rule operated to the disadvantage of Ministers.'—Mr. Chintamani's Memo. to the Reforms Enquiry Committee, 1924, para. 11.

[2] See *The Statesman* (Dak edition) of October 14, 1924. See also Mr. Ghuznavi's Memo. to the Reforms Enquiry Committee, 1924.

existing arrangement, many persons advocate the introduction of the 'separate purse' system. Under it, certain sources of revenue will be allocated to the Reserved, and certain other sources to the Transferred side of the Government. With all the advantages of this system, we feel that it will, if introduced, tend to destroy the unity of provincial administration; and that, secondly, it will involve in practice many difficulties, no less serious than those which it seeks to remedy—arising specially from the fluctuations of receipts from the heads of revenue allocated to the one or the other side of the Government and its consequent deficit budgets in some years. Besides, it should not be overlooked that a joint purse brings 'Ministers into association to some extent with the administration of Reserved subjects through the settlement of allocation of revenues[1].'

System of separate purse, how far desirable.

We may note here that the Government of India had recommended the system of separate purse in its first Despatch[2] on Indian Constitutional Reforms. But the Joint Select Committee did not accept[3] the recommendation. It suggested, on the other hand, the system of joint purse now in vogue.

We have stated above our conclusions in regard to the working of the Reforms since their introduction. We may be justly charged with having presented only the dark side of the picture. We are fully aware, however, of the fact that a good deal of useful work has been and is being done under the Reforms and that they have provided a good training in responsible government to the people of India. Our

[1] Vide '*Reports on the Working of the Reformed Constitution, 1927*', p. 166.
[2] See para. 70 of the Despatch.
[3] The Joint Select Committee's Report on Clause 1 of the Government of India Bill.

object in writing this chapter has been to point out some of the inherent defects in our present Constitution and also some of the difficulties [1] that have been experienced in its practical working. These defects and difficulties have in no small degree contributed to the present unpopularity of the Reforms and are partly responsible for the practically universal demand for the abolition of dyarchy, for the establishment of 'provincial autonomy', and for the introduction of the principle of responsible government into the Government of India. We also feel that the dyarchical form of Government, as recommended to be worked, cannot but involve difficulties in its actual working. If, on the other hand, it is worked, as some have suggested, on strictly dyarchical lines, the unity of provincial administration will be seriously affected and its educative value will be lost. Because of these inherent defects in dyarchy, we are also opposed to its introduction into the domain of the central Government.

Parliament and the administration of Transferred subjects.

We may say here a few words about Parliament's attitude towards the administration of the Transferred subjects. The authors of the Joint Report recommended[2] that in respect of all matters in which responsibility would be entrusted to representative bodies in India, Parliament must be prepared to forego the exercise of its own power of control, and that this process must continue *pari passu* with the development of responsible government in the provinces and eventually in the Government of India. This recommendation has been followed in practice by the House of Commons. It is now a well-established convention of the House that it will not interfere in the administration of the Transferred subjects. This convention

[1] For financial difficulties of the provinces see App. U, pp. 609–23.
[2] Joint Report, para. 291.

was established in 1921 by a ruling of the Speaker of the House. The occasion[1] of the ruling was as follows:—On February 23, 1921, a question was addressed to Mr. Montagu, the then Secretary of State for India, in regard to the appointment of Mr. Harkishan Lal[2] as a Minister in the Punjab. The reply given by Mr. Montagu provoked a number of supplementary questions. The Speaker's final ruling[3] on the subject was as follows:—

'. . . I have come to the conclusion that, having started upon this new departure of granting a measure of self-government to the provinces of India, it is highly undesirable that this House should interfere in any way with the control by those provincial legislatures of their own affairs. The Ministers who are selected by the provincial Governors . . . are responsible to the legislative Councils of those provinces, and even if this House were to pass some censure, either direct or indirect, upon such a Minister, it would be futile. . . . Upon the question of Transferred subjects I still hold that there is no right of interference by this House.'

This ruling established the principle of non-interference with the administration of the Transferred subjects by the House of Commons. In the absence of anything to the contrary, we may presume that this principle has been accepted also by the House of Lords.

Statutory Commission.

The authors of the Joint Report had recommended[4] that ten years after the institution of the Reforms, and again at intervals of twelve years thereafter, a Commission approved by Parliament should investigate the working of the changes introduced

[1] *Vide The Indian Annual Register*, 1922–23, vol. ii, pp. 14–22.
[2] Mr. Harkishan Lal was convicted of conspiracy to wage war against the King and was sentenced to transportation for life and forfeiture of property. He was subsequently pardoned.
[3] *See The Indian Annual Register*, 1922–23, vol. ii, pp. 20–21.
[4] The Joint Report, para. 288; also para 264.

into the provinces, and recommend as to their further progress. It should be, they continued, equally the duty of the Commission to examine and report upon the new constitution of the Government of India, with particular reference to the working of the machinery for representation, the procedure by certificate, and the results of joint sessions. The Commission would, doubtless, if it saw fit, have proposals to make for further changes in the light of the experience gained. Elsewhere[1] in their Report they had also stated: 'We regard it as essential, if the terms of the announcement of August 20 are to be made good, that there should from time to time come into being some outside authority charged with the duty of resurveying the political situation in India and of readjusting the machinery to the new requirements. We would provide, therefore, that ten years after the first meeting of the new councils established under the statute, a commission should be appointed to review the position. Criticism has been expressed in the past of the composition of Royal Commissions, and it is our intention that the commission which we suggest should be regarded as authoritative and should derive its authority from Parliament itself. The names of the commissioners therefore should be submitted by the Secretary of State to both Houses of Parliament for approval by resolution. The commissioners' mandate should be to consider whether by the end of the term of the legislature then in existence it would be possible to establish complete responsible government in any province or provinces, or how far it would be possible to approximate to it in others; to advise on the continued reservation of any departments for the transfer of which to popular control it has been proved to their satisfaction that the time had not yet come; to recommend the retransfer of other matters to the control

[1] Paras. 261-62.

of the Governor in Council if serious maladministration were established; and to make any recommendations for the working of responsible government or the improvement of the constitutional machinery which experience of the systems in operation may show to be desirable . . . . They should investigate the progress made in admitting Indians into the higher ranks of the public service. They should examine the apportionment of the financial burden of India with a view to adjusting it more fairly between the provinces. The commission should also examine the development of education among the people and the progress and working of local self-governing bodies. Lastly, the commission should consider the working of the franchise and the constitution of electorates, including the important matter of the retention of communal representation.'

In accordance with these proposals, it was provided in the original Section 84A of the Government of India Act as follows:—

'(1) At the expiration of ten years after the passing of the Government of India Act, 1919, the Secretary of State, with the concurrence of both Houses of Parliament, shall submit for the approval of His Majesty the names of persons to act as a commission for the purposes of this section.

'(2) The persons whose names are so submitted, if approved by His Majesty, shall be a commission for the purpose of inquiring into the working of the system of government, the growth of education, and the development of representative institutions, in British India, and matters connected therewith, and the commission shall report as to whether and to what extent it is desirable to establish the principle of responsible government, or to extend, modify or restrict the degree of responsible government then existing therein, including the question whether the

establishment of second chambers of the local legislatures is or is not desirable.

'(3) The commission shall also inquire into and report on any other matter affecting British India and the provinces, which may be referred to the commission by His Majesty.'

Commenting on this Section the Joint Select Committee remarked[1] as follows :—

'The Committee are of opinion that the Statutory Commission should not be appointed until the expiration of ten years, and that no changes of substance in the constitution, whether in the franchise or in the lists of reserved and transferred subjects or otherwise, should be made in the interval. The Commission will be fully empowered to examine the working of the constitutions in all their details in the provinces, and to advise whether the time has come for full responsible government in each province, or in the alternative whether and to what extent the powers of self-government already granted should be extended, or modified, or restricted. It should be clearly understood, also, that the Commission should be empowered to examine into the working of the Government of India and to advise in respect of the Government of India no less than in respect of the provincial governments.'

Notwithstanding the advice of the Committee, His Majesty's Government rightly decided[2] in 1927, for various reasons,[3] to accelerate the appointment of the Statutory Commission. As, however, it was thought that 'the

[1] The Joint Select Committee's Report on Clause 41 of the Government of India Bill, 1919.

[2] *Vide* the Government of India's Home Department Notification No. 5123—Public, dated November 8, 1927 ; also App. Q.

[3] *Ibid.* Also see the Earl of Birkenhead's Speech in the House of Lords on November 15, 1927.

Vide also *Parliamentary Debates : Amendment of the Government of India Act, Section* 84*A* (published by the Government of India), 1928, in this connexion.

antedating of the Commission involved '[1] an amendment of the Government of India Act, an Act[2] was passed by Parliament in November, 1927, amending ' Section 84A of the Government of India Act with respect to the time for the appointment of a Statutory Commission thereunder.' Among other things, this Act provided that in Section 84 A of the Government of India Act, " for the words ' At the expiration of ten years ' there shall be substituted the words 'within ten years.' " A Commission has since been appointed[3] for the purposes of the aforesaid Section of the Government of India Act, in accordance with the procedure laid down therein. It is composed as follows :—

The Right Hon. Sir John Simon, M.P. (Chairman);
Viscount Burnham ;
Lord Strathcona and Mount Royal ;
The Hon. E. C. G. Cadogan, M. P. ;
The Right Hon. Vernon Hartshorn,[4] M. P. ;
Colonel The Right Hon. George Lane-Fox, M. P.; and
Major C. R. Attlee, M. P.

[1] As we pointed out in the first edition of this work, there was nothing in Section 84A of the Government of India Act, as it stood before, to prevent the appointment of a Commission, constituted in the way prescribed therein or otherwise, before the expiry of the ten-year period. But if such a Commission had been appointed before 1929 and the Section in question had remained unaltered, then another Commission, constituted in the manner prescribed in the Section, would have to be appointed 'at the expiration of ten years after the passing of the Government of India Act, 1919.' We believe that the Government of India (Statutory Commission) Act, 1927, was passed by Parliament with a view to meeting this difficulty.

[2] The Government of India (Statutory Commission) Act, 1927. It is dated November 23, 1927.

[3] The appointment was made on November 26, 1927. See *Parliamentary Debates : Amendment of the Government of India Act, Section 84 A*, p. 258.

[4] The Right Hon. Stephen Walsh, M. P., who had been originally appointed a member, having resigned for reasons of ill-health, the Right Hon. Vernon Hartshorn was appointed in his place under a Warrant, dated December 7, 1927.—Vide *Parliamentary Debates : Amendment of the Government of India Act, Section 84-A*, p. 255.

It is a purely Parliamentary Commission in the sense that it consists of members of Parliament only. The cost of the Commission is to be borne by the revenues of India, but His Majesty's Government has decided to make a contribution of £ 20,000 towards it.[1]

The total exclusion[2] of Indians from the personnel of the Commission has naturally been regarded by many persons as an affront to Indian susceptibilities, and, as a result, the Commission has been boycotted by a very considerable and important section of the people of India. No such exclusion was required by the Government of India Act which merely demanded that the members of the Commission must be selected with the concurrence of both Houses of Parliament. In justification of the exclusion of Indians, the

[1] See Earl Winterton's speech in the House of Commons on November 25, 1927. Also see *Parliamentary Debates: Amendment of the Government of India Act, Section 84A*, p. 165.

[2] It should be mentioned here that arrangements have been made for the association of Indians with the work of the Statutory Commission by means of a Central Committee of seven members acting on behalf of the Indian Legislature, and provincial Committees acting on behalf of provincial legislatures. The Central Committee, of which Sir Sankaran Nair is the Chairman, has been partly elected by the Council of State, and partly nominated by the Government of India as the Legislative Assembly refused to co-operate with the Commission by 68 votes to 62. The Central Committee sits along with the Commission wherever evidence is taken in India, but a provincial Committee can sit with the Commission only when evidence is taken in the province concerned. Sir John Simon presides over the joint sittings of the Commission and Committees, styled the 'Joint Free Conference,' and members present at a joint sitting have the same rights in respect of the examination of witnesses. But it must not be forgotten, therefore, that neither the members of the Central Committee nor those of a provincial Committee are members of the Statutory Commission. The Committees are expected to submit separate reports. It has been argued that through the media of the Committees Indians would have ample opportunity of influencing the views of the members of the Statutory Commission.

It may be added here that the Statutory Commission is also being assisted in its task by an Education Committee, and by an economic expert (Mr. Walter T. Layton, Editor of the *Economist*) brought from England. Sir Philip Hartog, a member of the Public Service Commission, is the Chairman of the Education Committee.

Earl of Birkenhead, the then Secretary of State for India, said in the House of Lords[1] :—

'The function of the Commission is a simple one. It is to report to Parliament. When once the Commissioners have reported, they are *functi officio.* The task then belongs to others. What is it that Parliament was entitled to require from these reporters? What could these reporters contribute that would be most helpful to Parliament? I find myself in no doubt as to the answer to both these questions. Parliament could most be helped by the opinions of men of admitted integrity and independence, without any commitments of any kind at all in the past events of history, who went there with one object and one object only—namely, to acquaint themselves with the actualities of the problem and to equip themselves to be the wise advisers of Parliament . . . . . . I conceive of them (members of the Commission) as an exceptionally intelligent jury, going to India without any preconceived ideas at all, and with no task except to come to this country and give the honest result of the examination which they make of Indian politics.

'I have no doubt whatever, speaking as a constitutional lawyer, that the framers of the original and determining Act, when they spoke of a Commission, contemplated a Parliamentary Commission.[2] It is true that in terms they did

[1] On November 24th, 1927. *Vide* also *Parliamentary Debates*, etc., pp. 128–29.

[2] The Earl of Birkenhead was corroborated on this point by Viscount Chelmsford who, after quoting a passage from the Report of the Joint Select Committee, said :

'Mr. Montagu was a party to that Report and I think that quotation alone would show what was in his mind—that it was definitely a Parliamentary Commission or Committee, call it which you will, which he had in his mind to examine the constitutional development in India. Therefore, as I said at the beginning, I am deeply committed to the belief that this inquiry by Commission should be through the medium of a Parliamentary Commission.'—*Parliamentary Debates*, etc., . . . p. 159.

The passage quoted by Viscount Chelmsford occurs in that part

not so state it, but I draw the inference that they did not so state it because they thought it so obvious.'

He also argued[1] that the inclusion of Indians would necessarily make the Commission, if it were to be really representative of various interests, too unwieldy and inconvenient a body for the task to be assigned to it.

Although we do not deny that these reasons have some weight, yet we feel that the exclusion of Indians from the Commission has naturally further embittered the not-very-happy relations previously existing between England and India; and that it is possible that any advantages that may be derived from it would be more than counterbalanced by the harm that has been done by it. We only hope that the results of the inquiry now being carried on by the Statutory Commission will have justified the exclusion, and that the consequential changes made by Parliament in the Constitution of India will be of such character as will satisfy the legitimate aspirations of the people of India. The present constitution should be amended as early as possible, because it is not liked by any section of the Indian community.[2] As Lord Olivier rightly said in the House of Lords,[3] the dyarchical system (of Government) has ceased to perform any useful functions and the sooner it is superseded the better, because it is

of the Report of the Joint Select Committee which deals with the Preamble to the Government of India Bill. To our mind it is not very enlightening on the question at issue.

[1] Vide *Parliamentary Debates*, etc., ... pp. 130–133.

[2] In this connexion the attention of the reader is drawn to the Report of the Committee appointed, under the Chairmanship of Pandit Motilal Nehru, by the All Parties Conference in Bombay on May 9th, 1928, 'to consider and determine the principles of the constitution for India.' The Report is a document of great political importance, and should, therefore, receive from those who would frame the future constitution of India, the amount of consideration which it rightly deserves.

[3] On November 15, 1927. Vide *Parliamentary Debates: Amendment of the Government of India Act Section 84A*, pp. 26–27.

doing no good and is creating an atmosphere of misunderstanding and unrest.

Conclusion.

We cannot do better than conclude this chapter with the following quotation from Viscount Bryce's great work,[1] *The American Commonwealth* :—

'No constitution can be made to stand unsusceptible of change, because if it were, it would cease to be suitable to the conditions amid which it has to work, that is, to the actual forces which sway politics. And being unsuitable, it would be weak, not rooted in the nature of the State and in the respect of the citizens for whom it exists ; and being weak, it would presently be overthrown.'

[1] Page 362, new edition, 1922.

APPENDIX A

PREAMBLE TO THE GOVERNMENT OF INDIA ACT, 1919.

WHEREAS it is the declared[1] policy of Parliament to provide for the increasing association of Indians in every branch of Indian administration, and for the gradual development of self-governing institutions, with a view to the progressive realization of responsible government in British India as an integral part of the empire :

And whereas progress in giving effect to this policy can only be achieved by successive stages, and it is expedient that substantial steps in this direction should now be taken :

And whereas the time and manner of each advance can be determined only by Parliament, upon whom responsibility lies for the welfare and advancement of the Indian peoples :

And whereas the action of Parliament in such matters must be guided by the co-operation received from those on whom new opportunities of service will be conferred, and by the extent to which it is found that confidence can be reposed in their sense of responsibility :

And whereas, concurrently with the gradual development of self-governing institutions in the provinces of India, it is expedient to give to those provinces in provincial matters the largest measure of independence of the Government of India, which is compatible with the due discharge by the latter of its own responsibilities :

Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

APPENDIX B

THE DEVOLUTION RULES[2]

IN exercise of the powers conferred by sections 45A and 129A of the Government of India Act, the Governor-General in Council, with the sanction of the Secretary of State in Council, is pleased to make the following rules, the same having been approved by both Houses of Parliament :—

1. (1) These Rules may be called the Devolution Rules.

[1] See in this connexion Appendix R.

[2] *Vide* Notification No. 308-S. in *The Gazette of India* (Extra.), December 16, 1920; also *The Bengal Legislative Council Manual*, 1927, pp. 116-151.

Short title and commencement

(2) They shall come into force on a date to be appointed by the Governor-General in Council, with the approval of the Secretary of State in Council, and different dates may be appointed for different parts of India, and for different provisions of these rules.

Definitions.

2. In these rules, unless there is anything repugnant in the subject or context,—

(1) 'all-India revenues' means such portion of the revenues of India as is not allocated to local Governments under these rules;

(2) 'Schedule' means a Schedule to these rules;

(3) 'the Act' means the Government of India Act.

PART I.—CLASSIFICATION OF SUBJECTS

Classification of subjects.

3. (1) For the purpose of distinguishing the functions of the local Governments and local legislatures of Governors' provinces . . . . from the functions of the Governor-General in Council and the Indian legislature, subjects shall, in those provinces, be classified, in relation to the functions of Government, as central and provincial subjects in accordance with the lists set out in Schedule I.

(2) Any matter which is included in the list of provincial subjects set out in Part II of Schedule I shall, to the extent of such inclusion, be excluded from any central subject of which, but for such inclusion, it would form part.

Settlement of doubts.

4. Where any doubt arises as to whether a particular matter does or does not relate to a provincial subject, the Governor-General in Council shall decide whether the matter does or does not so relate, and his decision shall be final.

Duty of local Government to supply information.

5. The local Government shall furnish to the Governor-General in Council from time to time such returns and information of matters relating to the administration of provincial subjects as the Governor-General in Council may require and in such form as he may direct.

Transfer of subjects and revocation or suspension of transfer.

6. The provincial subjects specified in the first column of Schedule II shall, in the Governors' provinces shown against each subject in the second column of the said Schedule, be transferred subjects: provided that the Governor-General in Council may, by notification in the *Gazette of India*, with the previous sanction of the Secretary of State in Council, revoke or suspend for such period as he may consider necessary the transfer of all or any provincial subjects in any province

and upon such revocation or during such suspension the subjects shall not be transferred subjects.

Settlement of doubts.

7. If any doubt arises as to whether any matter relates to a reserved or to a transferred subject, the Governor shall decide the question, and his decision shall be final.

Transfer in consequence of legislation.

8. Where an Act of the Legislative Council of a Governor's province confers on local authorities powers of the management of matters relating to reserved subjects, those matters shall, to the extent of the powers conferred by such legislation, be deemed in that province to form part of the transferred subject of local self-government.

Matters affecting both reserved and transferred subjects.

9. (1) When a matter appears to the Governor to affect substantially the administration both of a reserved and of a transferred subject, and there is disagreement between the member of the Executive Council and the minister concerned as to the action to be taken, it shall be the duty of the Governor, after due consideration of the advice tendered to him, to direct in which department the decision as to such action shall be given: provided that, in so far as circumstances admit, important matters on which there is such a difference of opinion shall, before the giving of such direction, be considered by the Governor with his Executive Council and his ministers together.

(2) In giving such a direction as is referred to in sub-rule (1), the Governor may, if he thinks fit, indicate the nature of the action which should in his judgment be taken, but the decision shall thereafter be arrived at by the Governor in Council or by the Governor and minister or ministers, according as the department to which it has been committed is a department dealing with reserved or a department dealing with transferred subjects.

Regulation of exercise of authority over members of public services.

10. The authority vested in the local Government over officers of the public services employed in a Governor's province shall be exercised in the case of officers serving in a department dealing with reserved subjects by the Governor in Council, and in the case of officers serving in a department dealing with transferred subjects by the Governor acting with the minister in charge of the department: provided that—

(1) no order affecting emoluments or pensions, no order of formal censure, and no order on a memorial shall be passed to the disadvantage of an officer of an all-India or provincial service without the personal concurrence of the Governor; and

(2) no order for the posting of an officer of an all-India service shall be made without the personal concurrence of the Governor.

11. If an officer performs duties both in a department dealing with reserved subjects and in a department dealing with transferred subjects, the Governor shall decide in which department he shall be deemed to be serving.

Service in a department.

12. A local Government shall employ such number of Indian Medical Service officers in such appointments and on such terms and conditions as may be prescribed by the Secretary of State in Council.

Employment of I.M.S. officers.

12A. The Governor-General in Council shall have power to declare that any road or other means of communication is of military importance, and to prescribe in respect thereof the conditions subject to which it shall be constructed or maintained, including the amount of expenditure to be from time to time incurred upon such construction and maintenance by the Governor-General in Council and by the local Government respectively:

Provided that before prescribing under this rule the sums to be expended by any local Government, the Governor-General in Council shall consult the local Government or local Governments concerned.

13. Subject to the provisions of these rules, provincial subjects shall be administered by the local Government. But, save in the case of transferred subjects, nothing in these rules shall derogate from the power of superintendence, direction, and control conferrred on the Governor-General in Council by the Act.

Devolution.

PART II.—FINANCIAL ARRANGEMENTS

14. (1) The following sources of revenue shall, in the case of Governors' provinces . . . . be allocated to the local Government as sources of provincial revenue, namely:—

Allocation of revenue.

(*a*) balances standing at the credit of the province at the time when the Act comes into force;

(*b*)[1] receipts accruing in respect of provincial subjects;

(*c*) a share (to be determined in the manner provided by rule 15) in the growth of revenue derived from income-tax collected in the province, so far as that growth is attributable to an increase in the amount of income assessed;

[1] See *The Government of India Act*, published by the Government of India, p. 188.

(*d*) recoveries of loans and advances given by the local Government and of interest paid on such loans ;

(*e*) payments made to the local Government by the Governor-General in Council or by other local Governments, either for services rendered or otherwise ;

(*f*) the proceeds of any taxes which may be lawfully imposed for provincial purposes ;

(*g*) the proceeds of any loans which may be lawfully raised for provincial purposes ; and

(*h*) any other sources which the Governor-General in Council may by order declare to be sources of provincial revenue.

(2) The revenues of Berar shall be allocated to the local Government of the Central Provinces as a source of provincial revenue. This allocation shall be subject to the following conditions, namely :—

(*a*) that the local Government of the Central Provinces shall be responsible for the due administration of Berar ; and

(*b*) that if in the opinion of the Governor-General in Council provision has not been made for expenditure necessary for the safety and tranquillity of Berar, the allocation shall be terminated by order of the Governor-General in Council, or diminished by such amount as the Governor-General in Council may by order in writing direct.

Allocation of share in the income-tax.

15. (1) Whenever the assessed income of any year subsequent to the year 1920-21 exceeds in any Governor's province or in the province of Burma the assessed income of the year 1920-21, there shall be allocated to the local Government of that province an amount calculated at the rate of three pies in each rupee of the amount of such excess.

(2) In this rule ' the assessed income ' of any year (other than the year 1920-21) means the amount of income brought under assessment under the Indian Income-tax Act, 1918, in that year in respect of which income-tax is collected, whether in that year or thereafter :

Provided that the assessed income of any year subsequent to the year 1920-21 shall not include income in respect of which no share of the tax collected would have been credited to provincial revenues if such income had accrued and been brought under assessment in the year 1920-21.

(3) The assessed income of the year 1920-21 shall be such amount as the Governor-General in Council, after making due allowance for arrears caused by any abnormal delays in the collection of the

tax, may determine as the amount of income brought under assessment under the Indian Income-tax Act, 1918, in that year in respect of which income-tax is collected. It shall not include income in respect of which no share of the tax collected was credited to provincial revenues :

Provided that, where in any year subsequent to the year 1920-21 the income derived from any business is for any reason assessed to income-tax in a province other than that in which it was assessed in that year, the assessed income of the year 1920-21 of such first-mentioned province shall be increased, and that of the other province shall be decreased, by the amount of the income of the business brought under assessment in that year on which income-tax was collected.

Payment of Government revenues into the public account.

16. All moneys derived from sources of provincial revenue shall be paid into the public account, of which the Governor-General in Council is custodian, and credited to the Government of the province. The Governor-General in Council shall have power, with the previous sanction of the Secretary of State in Council, to prescribe by general or special order the procedure to be followed in the payment of moneys into, and in the withdrawal, transfer and disbursement of moneys from, the public account, and for the custody of moneys standing in the account.

Such orders may, to such extent and for such purposes as may be stipulated, delegate power to prescribe procedure for the said purposes to the Auditor-General, the Controller of the Currency and to local Governments.

Contributions by local Governments in 1921-22.

17. In the financial year 1921-22 contributions shall be paid to the Governor-General in Council by the local Governments mentioned below according to the following scale :—

Name of Province	Contributions (In lakhs of rupees)
Madras	348
Bombay	56
Bengal	63
United Provinces	240
Punjab	175
Burma	64
Central Provinces and Berar	22
Assam	15

Contributions in subsequent years.

18. (1) From the financial year 1922-23[1] onwards a total contribution of 983 lakhs, or such smaller sum as may be determined by the Governor-General in Council, shall be paid to the Governor-General in Council by the local Governments mentioned in the preceding rule. When for any year the Governor-General in Council determines as the total amount of the contribution a smaller sum than that payable for the preceding year, a reduction shall be made in the contributions of those local Governments only whose last previous annual contribution exceeds the proportion specified below of the smaller sum so determined as the total contribution ; and any reduction so made shall be proportionate to such excess :—

Madras	17-90ths.
Bombay	13-90ths.
Bengal	19-90ths.
United Provinces	18-90ths.
Punjab	9-90ths.
Burma	6½-90ths.
Central Provinces and Berar ...	5-90ths.
Assam	2½-90ths.

(2)[2] . . . .

Excess contributions in case of emergency.

19. In cases of emergency, the local Government of any province may be required by the Governor-General in Council, with the sanction of, and subject to the conditions approved by, the Secretary of State, to pay to the Governor-General in Council a contribution for any financial year in excess of the amount required by the preceding rules in the case of that year.

Priority of contributions.

20. The contributions fixed under the preceding rules shall be a first charge on the allocated revenues and moneys of the local Governments concerned, and shall be paid in such instalments, in such manner, and on such dates, as the Governor-General in Council may prescribe.

Withdrawal of balances.

21. At any time when he considers this course to be essential in the financial interests of India as a whole, the Governor-General in Council shall have power to require any local Government to which revenues have been allocated under these rules so to regulate its programme of expenditure as not to

[1] As we have stated before (page 480), provincial contributions have been completely remitted with effect from the year 1928-29.

[2] No longer of any practical importance.

reduce the balance at its credit in the public account on a specific date or dates below a stated figure, and shall have power to take the necessary steps by the restriction of issues of moneys to secure this end. Subject to this power, those local Governments shall be at liberty to draw on their balances, provided that notice of the amount which they propose to draw during the ensuing financial year is given to the Governor-General in Council before such date in each year as the Governor-General in Council may by order fix.

Interest on provincial balances.

22. (1) Whenever the Governor-General in Council has, on receipt of due notice of the intention of the local Government to draw on its balances, required it to reduce the extent of the proposed draft, he shall, at the end of the financial year in which the local Government is debarred from drawing, credit the local Government with interest on the amount which it was not permitted to draw. Such interest shall be a charge on the revenues of India, and shall be calculated at a rate which shall be one per cent. less than the rate charged by the Governor-General in Council during the year for advances made to the Provincial Loans Fund.

(2) The Governor-General in Council may also pay to a local Government interest on its surplus balances on such conditions as he may, with the approval of the Secretary of State, prescribe.

Provincial Loan Account.

23. Any moneys which, on the 1st day of April, 1921, are owed to the Governor-General in Council on account of advances made from the provincial loan account of any province shall be treated as an advance to the local Government from the revenues of India, and shall carry interest at a rate calculated on the average rate carried by the total amount owed to the Governor-General in Council on this account on the 31st March, 1921. The interest shall be payable upon such dates as the Governor-General in Council may fix. In addition, the local Government shall pay to the Governor-General in Council in each year an instalment in repayment of the principal amount of the advance, and this instalment shall be so fixed that the total advance shall, except where, for special reasons, the Governor-General in Council may otherwise direct, be repaid before the expiry of twelve years. It shall be open to any local Government to repay in any year an amount in excess of the fixed instalment.

Capital expenditure on irrigation works.

25. (1) The capital sums spent by the Governor-General in Council upon the construction in the various provinces of productive and protective irrigation works and of such other works financed from loan funds as may from time to time be handed over to the management of local

Governments shall be treated as advances made to the local Governments from the revenues of India. Such advances shall carry interest at the following rates, namely :—

(*a*) in case of outlay up to the end of the financial year 1916-17, at the rate of 3·3252 *per centum* ;

(*b*) in the case of outlay incurred after the financial year 1916-17, at the average rate of interest paid by the Governor-General in Council during the financial year preceding that in which the work in question is handed over to the local Government, on loans raised in the open market during the period from the end of 1916-17 to the beginning of the year in which the work is handed over.

(2) The interest shall be payable upon such dates as the Governor-General in Council may fix.

Advances by the Government of India.

25. The Governor-General in Council may at any time make to a local Government an advance from the revenues or moneys accruing to the Governor-General in Council on such terms as to interest and repayment as he may think fit.

Priority of interest charges.

26. The payment of interest on loans and advances made under the three preceding rules, and the repayment of the principal of an advance under rule 23, shall be a charge on the annual allocated revenues of the local Government, and shall have priority over all other charges, save only contributions payable to the Governor-General in Council.

Powers of sanctioning transferred expenditure.

27. (1) The local Government of a Governor's province shall not, without the previous sanction of the Secretary of State in Council or of the Governor-General in Council, as the case may be, include any proposal for expenditure on a transferred subject in a demand for a grant, if such sanction is required by the provisions of Schedule III to these rules.

(2) Subject to the provisions of sub-rule (1), the local Government of a Governor's province shall have power to sanction expenditure on transferred subjects to the extent of any grant voted by the Legislative Council.

(3) The local Government of a Governor's province shall have power to sanction any expenditure on transferred subjects which relates to the heads enumerated in section 72D (3) of the Act, subject to the approval of the Secretary of State in Council or of the Governor-General in Council, if any such approval is required by any rule for the time being in force.

28. The powers of a local Government under the preceding rule to sanction expenditure may be delegated by the local Government

to an authority subordinate to it, after previous consultation with the Finance Department, to such extent as may be required for the convenient and efficient despatch of public business.

Delegation of powers of sanction.

(2) Any sanction accorded under these rules shall remain valid for the specified period for which it is given, subject, in the case of voted expenditure, to the voting of grants in each year.

Famine Relief Fund

29. Each local Government mentioned in Schedule IV shall establish and maintain out of provincial revenues a famine relief fund in accordance with the provisions of that Schedule, and such fund shall be controlled and administered as required by those provisions.

Taxation and borrowing.

30. All proposals for raising taxation or for the borrowing of money on the revenues of a province shall, in the case of a Governor's province, be considered by the Governor with his Executive Council and ministers sitting together, but the decision shall thereafter be arrived at by the Governor in Council, or by the Governor and minister or ministers, according as the proposal originates with the Governor in Council or the Governor and ministers.

Allocation of revenues for the administration of transferred subjects.

31. Expenditure for the purpose of the administration of both reserved and transferred subjects shall, in the first instance, be a charge on the general revenues and balances of each province, and the framing of proposals for expenditure in regard to transferred and reserved subjects will be a matter for agreement between that part of the Government which is responsible for the administration of transferred subjects and that part of the Government which is responsible for the administration of reserved subjects.

Procedure in the event of failure to agree.

32. (1) If, at any time when proposals are to be framed for the apportionment of funds between reserved and transferred departments respectively, the Governor is satisfied that there is no hope of agreement within a reasonable time between the members of his Executive Council on the one hand and ministers on the other as to such apportionment, he may, by order in writting, allocate the revenues and balances of the province between reserved and transferred subjects, by specifying the fractional proportions of the revenues and balances which shall be assigned to each class of subjects.

(2) An order of allocation under this rule may be made by the Governor either in accordance with his own discretion, or in

accordance with the report of an authority to be appointed by the Governor-General in this behalf on the application of the Governor.

Period of order of allocation.

33. Every such order shall (unless it is sooner revoked) remain in force for a period to be specified in the order, which shall be not less than the duration of the then existing Legislative Council, and shall not exceed by more than one year the duration thereof:

Provided that the Governor may at any time, if his Executive Council and ministers so desire, revoke an order of allocation or make such other allocation as has been agreed upon by them:

Provided, further, that if the order which it is proposed to revoke was passed in accordance with the report of an authority appointed by the Governor-General, the Governor shall obtain the consent of the Governor-General before revoking the same.

Condition of order of allocation.

34. Every order of allocation made under these rules shall provide that, if any increase of revenue accrues during the period of the order on account of the imposition of fresh taxation, that increase, unless the legislature otherwise directs, shall be allocated in aid of that part of the Government by which the taxation is initiated.

Preparation of budget in default of agreement or order of allocation.

35. If at the time of the preparation of any budget no agreement or allocation such as is contemplated by these rules has been arrived at, the budget shall be prepared on the basis of the aggregate grants respectively provided for the reserved and transferred subjects in the budget of the year about to expire.

PART III.—FINANCE DEPARTMENT

Finance Department.

36. (1) In each Governor's province there shall be a Finance Department, controlled by a Member of the Executive Council, with a Financial Secretary, who shall be immediately subordinate to the Member.

(2) If the minister so desire, the Governor shall, after consultation with the ministers, appoint a Financial Adviser, whose duty it shall be to assist the ministers in the preparation of proposals for expenditure, and generally to advise the ministers in matters relating to finance.

(3) The Finance Department may delegate to the Financial Adviser all or any of the functions of the Finance Department specified in Rule 37 or referred to in any other rule contained in this Part and in relation to any function so delegated, references in this

Part to the Finance Department shall be deemed to be references to the Financial Adviser.

37. The Finance Department shall perform the following functions, namely :—

Functions of Finance Department.

(1) it shall be in charge of the account relating to loans granted by the local Government, and shall advise on the financial aspect of all transactions relating to such loans ;

(2) it shall be responsible for the safety and proper employment of the famine relief fund ;

(3) it shall examine and report on all proposals for the increase or reduction of taxation ;

(4) it shall examine and report on all proposals for borrowing by the local Government ; shall take all steps necessary for the purpose of raising such loans as have been duly authorized; and shall be in charge of all matters relating to the service of loans ;

(5) it shall be responsible for seeing that proper financial rules are framed for the guidance of other departments, and that suitable accounts are maintained by other departments and establishments subordinate to them ;

(6) it shall prepare an estimate of the total receipts and disbursements of the province in each year, and shall be responsible during the year for watching the state of the local Government's balances ;

(7) in connection with the budget and with supplementary estimates—

(*a*) it shall prepare the statement of estimated revenue and expenditure which is laid before the Legislative Council in each year and any supplementary estimates or demands for excess grants which may be submitted to the vote of the Council ;

(*b*) for the purpose of such preparation, it shall obtain from the departments concerned material on which to base its estimates, and it shall be responsible for the correctness of the estimates framed on the material so supplied :

(*c*) it shall examine and advise on all schemes of new expenditure for which it is proposed to make provision in the estimates, and shali decline to provide in the estimates for any scheme which has not been so examined ;

(8) on receipt of a report from an audit officer to the effect that expenditure for which there is no sufficient sanction is being incurred, it shall require steps to be taken to obtain sanction or that the expenditure shall immediately cease ;

(9) it shall lay the audit and appropriation reports before the committee on public accounts, and shall bring to the notice of the committee all expenditure which has not been duly authorized and any financial irregularities ;

(10) it shall advise departments responsible for the collection of revenue regarding the progress of collection and the methods of collection employed.

Powers of Finance Department with reference to re-appropriation.

38. (1) After grants have been voted by the Legislative Council—

(*a*) the Finance Department shall have power to sanction any re-appropriation within a grant from one major, minor or subordinate head to another ;

(*b*) the member or minister in charge of a department shall have power to sanction any re-appropriation within a grant between heads subordinate to a minor head which does not involve undertaking a recurring liability, provided that a copy of any order sanctioning such a re-appropriation shall be communicated to the Finance Department as soon as it is passed.

(2) The Finance Department shall have power to sanction the delegation by a member or minister to any officer or class of officers of the power of re-appropriation conferred on such member or minister by clause (1) (*b*) above.

(3) Copies of orders sanctioning any re-appropriation which does not require the sanction of the Finance Department shall be communicated to that department as soon as such orders are

Matters to be referred to Finance Department.

39. No expenditure on any of the heads detailed in section 72D (3) of the Act, which is in excess of the estimate for that head shown in the budget of the year, shall be incurred without previous consultation with the Finance Department.

Establishment changes.

40. No office may be added to, or withdrawn from, the public service in the province, and the emoluments of no post may be varied, except after consultation with the Finance Department ; and, when it is proposed to add a permanent or temporary post to the public service, the Finance Department shall, if it thinks necessary, refer for the decision of the Audit Department the question whether the sanction of the Secretary of State in Council is, or is not, necessary.

Allowances and pay.

41. No allowance and no special or personal pay shall be sanctioned for any post or class of posts or for any Government servant without previous consultation with the Finance Department.

(*c*) inland waterways, to an extent to be declared by rule made by the Governor-General in Council or by or under legislation by the Indian legislature.

6. Shipping and navigation, including shipping and navigation on inland waterways, in so far as declared to be a central subject in accordance with entry 5 (*c*).

7. Light-houses (including their approaches), beacons, lightships and buoys.

8. Port quarantine and marine hospitals.

9. Ports[1] declared to be major ports by rule made by the Governor-General in Council or by or under legislation by the Indian legislature.

10. Posts, telegraphs and telephones, including wireless installations.

11. Customs, cotton excise duties, income-tax, salt and other sources of all-India revenues.

12. Currency and coinage.

13. Public debt of India.

14. Savings Banks.

15. The Indian Audit Department as defined in rules framed under section 96D (1) of the Act.

16. Civil law, including laws regarding status, property, civil rights and liabilities, and civil procedure.

17. Commerce, including banking and insurance.

18. Trading companies and other associations.

19. Control of production, supply, and distribution of any articles in respect of which control by a central authority is declared by rule made by the Governor-General in Council or by or under legislation by the Indian legislature to be essential in the public interest; save to the extent to which in such rule or legislation such control is directed to be exercised by a local Government.

20. Development of industries, in cases where such development by central authority is declared by order of the Governor-General in Council, made after consultation with the local Government or local Governments concerned, expedient in the public interest.

21. Control of cultivation and manufacture of opium, and sale of opium for export.

[1] The ports of Calcutta, Bombay, Karachi, Aden, Rangoon, Chittagong, Vizagapatam and Madras have been declared to be major ports.

22. Stores and stationery, both imported and indigenous, required for Imperial Departments.

23. Control of petroleum and explosives.

24. Geological survey.

25. Control of mineral development, in so far as such control is reserved to the Governor-General in Council under rules made or sanctioned by the Secretary of State, and regulation of mines.

26. Botanical survey.

27. Inventions and designs.

28. Copyright.

29. Emigration from, and immigration into, British India, and inter-provincial migration.

30. Criminal Law, including criminal procedure.

31. Central police organization.

32. Control of arms and ammunition.

33. Central agencies and institutions for reserach (including observatories) and for professional or technical training or promotion of special studies.

34. Ecclesiastical administration, including European cemeteries.

35. Survey of India.

36. Archæology.

37. Zoological Survey.

38. Meteorology.

39. Census and statistics.

40. All-India services.

41. Legislation in regard to any provincial subject, in so far as such subject is in Part II of this Schedule stated to be subject to legislation by the Indian legislature, and any powers relating to such subject reserved by legislation to the Governor-General in Council.

42. Territorial changes, other than inter-provincial, and declaration of laws in connection therewith.

43. Regulation of ceremonial, titles, orders, precedence and civil uniform.

44. Immovable property in the possession of the Governor-General in Council.

45. The Public Service Commission.

46. All matters expressly excepted by the provisions of Part II of this Schedule from inclusion among provincial subjects.

47. All other matters not included among provincial subjects under Part II of this Schedule.

PART II.—PROVINCIAL SUBJECTS

1. Local self-government, that is to say, matters relating to the constitution and powers of municipal corporations, improvement trusts, district boards, mining boards of health, and other local authorities established in a province for the purpose of local self-government, exclusive of matters arising under the Cantonments Act, 1910; subject to legislation by the Indian legislature as regards—

(1) the powers of such authorities to borrow otherwise than from a provincial government, and

(2) the levying by such authorities of taxation not included in Schedule II to the Scheduled Taxes Rules.

2. Medical administration, including hospitals, dispensaries, and asylums, and provision for medical education.

3. Public health and sanitation and vital statistics, subject to legislation by the Indian legislature in respect to infectious and contagious diseases to such extent as may be declared by any Act of the Indian legislature.

4. Pilgrimages within British India.

5. Education : provided that—

(1) the following subjects shall be excluded, namely :—

(*a*) the Benares Hindu University, the Aligarh Muslim University, and such other Universities constituted after the commencement of these rules as may be declared by the Governor-General in Council to be central subjects, and

(*b*) Chiefs' Colleges and any institution maintained by the Governor-General in Council for the benefit of members of His Majesty's Forces or of other public servants or of the children of such members or servants : and

(2) the following subject shall be subject to legislation by the Indian legislature, namely :—

(*a*) the definition of the jurisdiction of any University outside the province in which it is situated.

6. Public Works, other than those falling under entry 14 of this Part and included under the following heads, namely :—

(*a*) construction and maintenance of provincial buildings used or intended for any purpose in connection with the administration of the province ; and care of historical monuments, with the exception of ancient monuments as defined in section 2 (1) of the Ancient Monuments Preservation Act, 1904, which are for the time being declared to

be protected monuments under section 3 (1) of that Act : provided that the Governor-General in Council, may, by notification in *The Gazette of India*, remove any such monument from the operation of this exception, either absolutely or subject to such conditions as he may, after consultation with the local Government or local Governments concerned, prescribe ;

(*b*) roads, bridges, ferries, tunnels, ropeways and causeways, and other means of communication, subject to the provisions of rule 12 A of these rules, and of any orders made thereunder ;

(*c*) tramways within municipal areas ; and

(*d*) light and feeder railways and extra-municipal tramways, in so far as provision for their construction and management is made by provincial legislation : subject to legislation by the Indian legislature in the case of any such railway or tramway which is in physical connection with a main line or is built on the same gauge as an adjacent main line.

7. Water-supplies, irrigation and canals, drainage and embankments, water storage and water power ; subject to legislation by the Indian legislature with regard to matters of inter-provincial concern or affecting the relations of a province with any other territory.

8. Land revenue administration as described under the following heads, namely :—

(1) assessment and collection of land revenue ;

(2) maintenance of land records, survey for revenue purposes, records-of-rights ;

(3) laws regarding land tenures, relations of landlords and tenants, collection of rents ;

(4) Courts of Wards, encumbered and attached estates ;

(5) land improvement and agricultural loans ;

(6) colonization and disposal (subject to any provisions or restrictions that may be prescribed by the Secretary of State in Council under section 30 of the Act) of Crown lands not in the possession of the Governor-General in Council, and alienation of land revenue ; and

(7) management of Government estates.

9. Famine relief.

10. Agriculture, including research institutes, experimental and demonstration farms, introduction of improved methods, provision for agricultural education, protection against destructive insects and pests and prevention of plant diseases ; subject to legislation by the Indian legislature in respect to destructive insects and pests and

plant diseases to such extent as may be declared by any Act of the Indian legislature.

11. Civil Veterinary Department, including provision for veterinary training, improvement of stock, and prevention of animal diseases; subject to legislation by the Indian legislature in respect to animal diseases to such extent as may be declared by any Act of the Indian legislature.

12. Fisheries.

13. Co-operative Societies.

14. Forests, including preservation of game therein and all buildings and works executed by the Forest Department; subject to legislation by the Indian legislature as regards disforestation of reserved forests.

15. Land acquisition; subject to legislation by the Indian legislature.

16. Excise, that is to say, the control of production, manufacture, possession, transport, purchase, and sale of alcoholic liquor and intoxicating drugs, and the levying of excise duties and licence fees on, or in relation to, such articles, but excluding, in the case of opium, control of cultivation, manufacture and sale for export.

17. Administration of justice, including constitution, powers, maintenance and organization of courts of civil and criminal jurisdiction within the province; subject to legislation by the Indian legislature as regards High Courts, Chief Courts and Courts of Judicial Commissioners, and any courts of criminal jurisdiction.

18. Provincial law reports.

19. Administrators-General and Official Trustees; subject to legislation by the Indian legislature.

20. Non-judicial stamps, subject to legislation by the Indian legislature, and judical stamps, subject to legislation by the Indian legislature as regards amount of court-fees levied in relation to suits and proceedings in the High Courts under their original jurisdiction.

21. Registration of deeds and documents; subject to legislation by the Indian legislature.

22. Registration of births, deaths, and marriages; subject to legislation by the Indian legislature for such classes as the Indian legislature may determine.

23. Religious and charitable endowments.

24. Development of mineral resources which are Government property, subject to rules made or sanctioned by the Secretary of State, but not including the regulation of mines.

24-A. Control of production, supply and distribution of any articles to the extent to which by rule made by the Governor-General in Council or by or under legislation by the Indian Legislature such control is directed to be exercised by a local Government.

25. Development of industries, including industrial research and technical education.

26. Industrial matters included under the following heads, namely :—

(*a*) factories ;
(*b*) settlement of labour disputes ;
(*c*) electricity ;
(*d*) boilers ;
(*e*) gas ;
(*f*) smoke-nuisances ; and
(*g*) welfare of labour, including provident funds, industrial insurance (general, health and accident) and housing ;

subject as to heads (*a*), (*b*), (*c*), (*d*), and (*g*) to legislation by the Indian legislature.

27. Stores and stationery ; subject, in the case of imported stores and stationery, to such rules as may be prescribed by the Secretary of State in Council.

28. Adulteration of foodstuffs and other articles ; subject to legislation by the Indian legislature as regards import and export trade.

29. Weights and measures ; subject to legislation by the Indian legislature as regards standards.

30. Ports, except such ports as may be declared by rule made by the Governor-General in Council or by or under Indian legislation to be major ports.

31. Inland waterways, including shipping and navigation thereon so far as not declared by the Governor-General in Council to be central subjects ; but subject as regards inland steam-vessels to legislation by the Indian legislature.

32. Police, including railway police ; subject, in the case of railway police, to such conditions as regards limits of jurisdiction and railway contributions to cost of maintenance as the Governor-General in Council may determine.

33. The following miscellaneous matters, namely :—

(*a*) regulation of betting and gambling ;
(*b*) prevention of cruelty to animals ;
(*c*) protection of wild birds and animals ;

(*d*) control of poisons; subject to legislation by the Indian legislature;

(*e*) control of vehicles; subject, in the case of motor vehicles, to legislation by the Indian legislature as regards licences valid throughout British India; and

(*f*) control of dramatic performances and cinematographs; subject to legislation by the Indian legislature in regard to sanction of films for exhibition.

34. Control of newspapers, books and printing presses; subject to legislation by the Indian legislature.

35. Coroners.

36. Excluded areas.

37. Criminal tribes; subject to legislation by the Indian legislature.

38. European vagrancy; subject to legislation by the Indian legislature.

39. Prison, prisoners (except persons detained under the Bengal State Prisoners Regulations, 1818, the Madras State Prisoners Regulation, 1819, or the Bombay Regulation XXV of 1827) and Reformatories; subject to legislation by the Indian legislature.

40. Pounds and prevention of cattle trespass.

41. Treasure trove.

42. Libraries (except the Imperial Library) and museums (except the Indian Museum, the Imperial War Museum and the Victoria Memorial, Calcutta) and Zoological Gardens.

43. Provincial Government Presses.

44. Elections for Indian and provincial legislatures; subject to rules framed under Section 64 (1) and 72A (4) of the Act.

45. Regulation of medical and other professional qualifications and standards; subject to legislation by the Indian legislature.

46. Local Fund Audit, that is to say, the audit by Government agency of income and expenditure controlled by local bodies.

47. Control, as defined by rule 10, of members of all-India and provincial services serving within the province, and control, subject to legislation by the Indian legislature, of public services within the province other than all-India services.

48. Sources of provincial revenue not included under previous heads, whether—

(1) taxes included in the Schedules to the Scheduled Taxes Rules; or

(2) taxes not included in those Schedules, which are imposed by

or under provincial legislation which has received the previous sanction of the Governor-General.

49. Borrowing of money on the sole credit of the province; subject to the provisions of the local Government (Borrowing) Rules.

50. Imposition by legislation of punishments by fine, penalty, or imprisonment for enforcing any law of the province relating to any provincial subject; subject to legislation by the Indian legislature in the case of any subject in respect of which such a limitation is imposed under these rules.

51. Any matter which, though falling within a central subject, is declared by the Governor-General in Council to be of a merely local or private nature within the province.

SCHEDULE II

(*See Rule* 6)

LIST OF PROVINCIAL SUBJECTS FOR TRANSFER

Column I	Column II
1. Local self-government—that is to say, matters relating to the constitution and powers of municipal corporations, improvement trusts, district boards, mining boards of health, and other local authorities established in the province for purposes of local self-government, exclusive of matters arising under the Cantonments Act, 1910; subject to legislation by the Indian legislature as regards (*a*) the powers of such authorities to borrow otherwise than from a provincial Government, and (*b*) the levying by such authorities of taxation not included in Schedule II to the Scheduled Taxes Rules.	All Governors' provinces.
2. Medical administration, including hospitals, dispensaries and asylums, and provision for medical education.	Ditto.
3. Public health and sanitation and vital statistics; subject to legislation by the Indian legislature in respect to infectious and contagious	Ditto.

Column I	Column II
diseases to such extent as may be declared by any Act of the Indian legislature.	All Governors' provinces.
4. Pilgrimages within British India.	Ditto.
5. Education, other than European and Anglo-Indian education, provided that — (1) the following subjects shall be excluded, namely :— (*a*) the Benares Hindu University, the Aligarh Muslim University, and such other Universities, constituted after the commencement of these rules, as may be declared by the Governor-General in Council to be central subjects ; and (*b*) Chiefs' Colleges and any institution maintained by the Governor-General in Council for the benefit of members of His Majesty's Forces or of other public servants or of the children of such members or servants ; and (2) the following subject shall be subject to legislation by the Indian legislature, namely :— the definition of the jurisdiction of any University outside the province in which it is situated.	Ditto.
6. Public works, other than those falling under entry II of this part, and included under the following heads, namely :— (1) construction and maintenance of provincial buildings, other than residences of Governors of provinces, used or intended for any purpose in connection with the administration of the province on behalf of the departments of Government concerned, save in so far as the Governor may assign such work to the departments using or requiring such buildings ; and care of historical monuments, with the exception of ancient monuments, as defined in section 2(1) of the Ancient Monuments Preservation Act, 1904, which are for the time being declared to be protected monuments under section	All Governors' provinces, except Assam.

Column I	Column II
3(1) of that Act : provided that the Governor-General in Council may, by notification in *The Gazette of India*, remove any such monument from the operation of this exception either absolutely or subject to such conditions as he may, after consultation with the local Government or local Governments concerned, prescribe. (2) roads, bridges, ferries, tunnels, ropeways and causeways, and other means of communication, subject to the provisions of rule 12A of these rules, and of any orders made thereunder ; (3) tramways within municipal areas; and (4) light and feeder railways and extra-municipal tramways, in so far as provision for their construction and management is made by provincial legislation; subject to legislation by the Indian legislature in the case of any such railway or tramway which is in physical connection with a main line or is built on the same gauge as an adjacent main-line.	All Governors' provinces, except Assam.
7. Agriculture, including research institutes, experimental and demonstration farms, introduction of improved methods, provision for agricultural education, protection against destructive insects and pests and prevention of plant diseases; subject to legislation by the Indian legislature in respect to destructive insects and pests and plant diseases to such extent as may be declared by any Act of the Indian legislature.	All Governors' provinces.
8. Civil Veterinary Department, including provision for veterinary training, improvement of stock, and prevention of animal diseases ; subject to legislation by the Indian legislature in respect to animal diseases to such extent as may be declared by any Act of the Indian legislature.	Ditto.
9. Fisheries.	Ditto.
10. Co-operative Societies.	Ditto.
11. Forests, including preservation of game therein, and all buildings and works executed by	Bombay.

Column I	Column II
the Forest Department, subject to legislation by the Indian legislature as regards disforestation of reserved forests.	Bombay
11A. Notifications under sub-section (1) of section 4 and declarations under sub-section (1) of section 6 of the Land Acquisition Act, 1894, when the public purpose referred to in the said sub-sections appertains to a transferred subject; subject to legislation by the Indian legislature.	Ditto.
12. Excise, that is to say, the control of production, manufacture, possession, transport, purchase and sale of alcoholic liquor and intoxicating drugs, and the levying of excise duties and licence fees on, or in relation to such articles, but excluding, in the case of opium, control of cultivation, manufacture, and sale for export.	Ditto.
13. Registration of deeds and documents; subject to legislation by the Indian legislature.	Ditto.
14. Registration of births, deaths, and marriages; subject to legislation by the Indian legislature for such classes as the Indian legislature may determine.	Ditto
15. Religious and charitable endowments.	Ditto.
16. Development of industries, including industrial research and technical education.	Ditto.
17. Stores and stationery required for transferred departments; subject, in the case of imported stores and stationery, to such rules as may be prescribed by the Secretary of State in Council.	Ditto.
18. Adulteration of foodstuffs and other articles; subject to legislation by the Indian legislature as regards import and export trade.	Ditto
19. Weights and measures, subject to legislation by the Indian legislature as regards standards.	
20. Libraries (other than the Imperial Library), Museums (except the Indian Museum, the Imperial War Museum, and the Victoria Memorial, Calcutta), and Zoological Gardens.	Ditto

SCHEDULE III

(*See Rule* 27)

RULES RELATING TO TRANSFERRED SUBJECTS.

1. The previous sanction of the Secretary of State in Council is necessary—

(1) to the creation of any new or the abolition of any existing permanent post, or to the increase or reduction of the pay drawn by the incumbent of any permanent post, if the post in either case is one which would ordinarily be held by a member of an all-India service, or to the increase or reduction of the cadre of an all-India service;

(2) to the creation of a permanent post on a maximum rate of pay exceeding Rs. 1,200 a month, or the increase of the maximum pay of a sanctioned permanent post to an amount exceeding Rs. 1,200 a month;

(3) to the creation of a temporary post with pay exceeding Rs. 4,000 a month or to the extension beyond a period of two years of a temporary post (or deputation) with pay exceeding Rs. 1,200 a month;

[If the holder of a temporary post created by the local Government, the rupee pay of which does not exceed Rs. 3,000 a month, would have drawn overseas pay in sterling, had he not been appointed to this post, the local Government may permit the holder of that post to draw, in addition to the rupee pay sanctioned for the post, overseas pay in sterling not exceeding the amount to which he would have been entitled had he not been appointed to the temporary post.]

(4) to the grant to any Government servant or to the family or other dependants of any deceased Government servant of an allowance, pension or gratuity which is not admissible under rules made or for the time being in force under section 96B of the Act, except in the following cases:—

(*a*) compassionate gratuities to the families of Government servants left in indigent circumstances, subject to such annual limit as the Secretary of State in Council may prescribe; and

(*b*) pensions or gratuities to Government servants wounded or otherwise injured while employed in Government service or to the families of Government servants dying as the result of wounds or injuries sustained while employed in such service, granted in accordance with such rules as

have been or may be laid down by the Secretary of State in Council in this behalf ; and

(5) *Omitted*

2. (1) Every application for the sanction of the Secretary of State in Council required by paragraph 1 shall be addressed to the Governor-General in Council, who shall, save as hereinafter provided, forward the same with his recommendations, and with such further explanations of the proposal as he may have seen fit to require from the local Government, to the Secretary of State in Council.

(2) If the application relates to—

(*a*) the grant in an individual case of any increase of pay, or

(*b*) the creation or extension of a temporary post,

the Governor-General in Council may, at his discretion, on behalf of the Secretary of State in Council, sanction the proposal, or may, and, if he dissents from the proposal, shall, forward the application with his recommendations, and with such further explanations of the proposal as he may have seen fit to require from the local Government, for the orders of the Secretary of State in Council.

PUBLIC.

The 27th September, 1928.

No. F-174-II-28.—In exercise of the powers conferred by sections 45A and 129A of the Government of India Act, the Governor-General in Council, with the sanction of the Secretary of State in Council, is pleased to direct that the following further amendments shall be made in the Devolution Rules, namely :—

I. In rule 29 of the said Rules, for the word 'insurance' the word 'relief' shall be substituted.

II. For Schedule IV to the said Rules, the following Schedule shall be substituted, namely :—

SCHEDULE IV.

(*See Rule* 29)

1. The local Governments of the provinces mentioned below, shall, save as hereinafter provided, make in every year beginning with the financial year 1929–1930 provision in their budgets for expenditure

upon the relief of famine of such amounts respectively (hereinafter referred to as the annual assignments) as are stated against each :—

			Rs.
Madras	...	...	... 3,00,000
Bombay	...	...	... 12,00,000
Bengal	...	...	... 2,00,000
United Provinces	...	...	.. 16,00,000
Punjab	...	...	... 2,00,000
Bihar and Orissa	...	...	... 3,00,000
Central Provinces	...	...	... 4,00,000

Provided that no annual assignment need be greater than is necessary to bring the accumulated total of the famine relief fund up to the amount specified in paragraph 5.

2. The annual assignment shall not be expended save upon the relief of famine. Any portion of an assignment which is not so spent shall be transferred to the famine relief fund of the province.

3. The local Government, in making provision in its budget for the annual assignment, shall include in demands for grant such portion of the assignment as is proposed to be expended for the relief of famine. The amount required, over and above the grants voted for the aforesaid purposes, to make up the total of the annual assignment, shall not be included in a demand for grant, but shall be provided in the shape of a lump sum allocated for transfer to the famine relief fund.

4. The famine relief fund shall consist of (*a*) the amount outstanding at the credit of the famine insurance fund heretofore maintained and (*b*) the unexpended balances of the annual assignments for each year, transferred to the fund under paragraph 2 of this Schedule, together with any interest which may accrue on these balances under paragraph 6 and any recoveries of interest and principal under paragraph 9.

5. The local Government may, in any year, when the accumulated total of the famine relief fund of the province is not less than the amount specified below, suspend temporarily the provision of the annual assignment :—

			Rs.
Madras	...	...	... 40,00,000
Bombay	...	...	... 75,00,000
Bengal	...	...	... 12,00,000
United Provinces	...	...	... 55,00,000
Punjab	...	...	... 20,00,000

	Rs.
Bihar and Orissa	15,00,000
Central Provinces	45,00,000

6. The famine relief fund shall form part of the general balances of the Governor-General in Council, who shall pay at the end of each year interest on the average of the balances held in the fund on the last day of each quarter. The interest shall be calculated for the financial year at a rate which shall be one *per cent.* less than the rate charged by the Governor-General in Council during the year for advances made to the Provincial Loans Fund. Such interest shall be credited to the fund.

7. The local Government may at any time expend the balance at its credit in the famine relief fund upon the relief of famine.

8. When the balance in the famine relief fund exceeds the amount specified in paragraph 5, the local Government may utilize the excess to meet expenditure on protective irrigation works; in the grant of loans to cultivators, either under the Land Improvement Loans Act, 1883, or under the Agriculturists' Loans Act, 1884, or for relief purposes; or in the repayment of advances from the Provincial Loans Fund, or to meet irrecoverable balances of loans under the said Acts, or for relief purposes when such loans have been made from the Provincial Loan Account:

Provided that the excess of the accumulated balance in the Fund on April 1, 1929, over the minimum balance prescribed in paragraph 5, may, in the case of Bombay, Bihar and Orissa and the Central Provinces, be utilized, with the approval of the Governor-General in Council, on objects other than those specified in this paragraph.

9. Loans to cultivators under paragraph 8 shall be made through the Provincial Loan Account and the amount lent shall be repaid with interest to the famine relief fund by equated instalments, the rate of interest being the rate determined under paragraph 6 for the financial year in which the loan was made to the Provincial Loan Account.

10. In case of doubt whether the purpose for which it is proposed to spend any portion of the annual assignment, of the famine relief fund or the balance thereof is one of the purposes specified in paragraph 2 of this Schedule, the decision of the Governor shall be final.

11. The annual accounts of the annual assignments and of the fund shall be maintained in forms to be prescribed in this behalf by the Auditor-General.

12. The local Government of the provinces mentioned in paragraph 1 shall make such adjustments in their budgets for the financial year 1928-29 as will have the effect of substituting the annual assignment prescribed in paragraph 1 for the annual assignment included in the budget in pursuance of the provisions heretofore in force.

APPENDIX C

THE LOCAL GOVERNMENT (BORROWING) RULES[1]

Short title and commencement.

1. (1) These rules may be called the Local Government (Borrowing) Rules.

(2) They shall come into force on a date to be appointed by the Governor-General in Council, with the approval of the Secretary of State in Council, and different dates may be appointed for different parts of India.

Purposes for which loans may be raised.

2. A local Government may raise loans on the security of the revenues allocated to it for any of the following purposes, namely :—

(*a*) to meet capital expenditure on the construction or acquisition (including the acquisition of land, maintenance during construction and equipment) of any work or permanent asset of a material character in connection with a project of lasting public utility, provided that—

(*i*) the proposed expenditure is so large that it cannot reasonably be met from current revenues ; and

(*ii*) if the project appears to the Governor-General in Council unlikely to yield a return of not less than such percentage as he may from time to time by order prescribe, arrangements are made for the amortization of the debt ;

(*b*) to meet any classes of expenditure on irrigation which have, under rules in force before the passing of the Act, been met from loan funds ;

(*c*) for the giving of relief and the establishment and maintenance of relief works in times of famine or scarcity ;

[1] See Notification No. 309-S. in *The Gazette of India* (Extra.), December 16, 1920 ; see also *The Bengal Legislative Council Manual*, 1927, pp. 151-53.

(*d*) for the financing of the Provincial Loan Account ; and

(*e*) for the repayment or consolidation of loans raised in accordance with these rules or the repayment of advances made by the Governor-General in Council.

3. (1) No loan shall be raised by a local Government without the sanction (in the case of loans to be raised in India) of the Governor-General in Council, or (in the case of loans to be raised outside India) of the Secretary of State in Council, and in sanctioning the raising of a loan, the Governor-General in Council or the Secretary of State in Council, as the case may be, may specify the amount of the issue and any or all of the conditions under which the loan shall be raised.

(2) Every application for the sanction of the Secretary of State required by this rule shall be transmitted through the Governor-General in Council.

Priority.

4. Every loan raised by a local Government in accordance with these rules shall be a charge on the whole of the revenues allocated to the local Government, and all payments in connection with the service of such loans shall be made in priority to all payments by the local Government other than the payments of—

(1) the fixed provincial contribution payable to the Governor-General in Council ;

(2) interest due on sums advanced to the local Government by the Governor-General in Council from the revenues of India ; and

(3) interest due on all loans previously raised by the local Government.

APPENDIX D

The Transferred Subjects (Temporary Administration) Rules [1]

Short title and commencement.

1. (1) These rules may be called the Transferred Subjects (Temporary Administration) Rules.

(2) They shall come into force on a date to be appointed by the Governor-General in Council with the approval

[1] See Notification No. 310-S. in *The Gazette of India* (Extra.), December 16, 1920 ; see also *The Bengal Legislative Council Manual*, 1927, pp. 153–54.

of the Secretary of State in Council, and different dates may be appointed for different parts of India.

Vacancy in office of minister.

2. In case of emergency where, owing to a vacancy, there is no minister in charge of a transferred subject, the Governor—

(1) shall, if another minister is available and willing to take charge of the subject, appoint such minister to administer the subject temporarily ; or

(2) shall, if the vacancy cannot be provided for in the manner aforesaid, himself temporarily administer the subject, and, while so doing, shall exercise, in relation to such subject, all such powers in addition to his own powers as Governor as he could exercise if he were the minister in charge thereof.

Certification of necessity.

3. In any case in which the Governor himself undertakes temporarily to administer a subject under these rules, he shall certify that an emergency has arisen in which, owing to a ministerial vacancy, it is necessary for him so to do, and shall forthwith forward a copy of such certificate for the information of the Governor-General in Council.

Administration to be temporary.

4. Such temporary administration by the Governor shall only continue until a minister has been appointed to administer the subject.

Certification of legislation.

5. The Governor shall not exercise in respect of such subject the powers conferred on him by section 72E of the Government of India Act.

APPENDIX E

THE SCHEDULED TAXES RULES [1]

Short title and commencement.

1. (1) These rules may be called the Scheduled Taxes Rules.

(2) They shall come into force on a date to be appointed by the Governor-General in Council, with the approval of the Secretary of State in Council, and different dates may be appointed for different parts of India.

Taxes which may be imposed for purposes of local government.

2. The Legislative Council of a province may, without the previous sanction of the Governor-General, make and take into consideration any law imposing, for the purposes of the local Government, any tax included in Schedule I to these rules.

[1] See Notification No. 311-S. in *The Gazette of India* (Extra.), December 16, 1920 ; see also *The Bengal Legislative Council Manual*, 1927, pp. 154-56.

3. The Legislative Council of a province may, without the previous sanction of the Governor-General, make and take into consideration any law imposing, or authorizing any local authority to impose, for the purposes of such local authority, any tax included in Schedule II to these rules.

Taxes which may be imposed for purposes of local authorities.

4. The Governor-General in Council may at any time, by order, make any addition to the taxes enumerated in Schedules I and II to these rules.

Additions to Schedules.

5. Nothing in these rules shall affect the right of a local authority to impose a tax without previous sanction or with the previous sanction of the local Government when such right is conferred upon it by any law for the time being in force.

Saving.

SCHEDULE I

1. A tax on land put to uses other than agricultural.
2. A tax on succession or on acquisition by survivorship in a joint family.
3. A tax on any form of betting or gambling permitted by law.
4. A tax on advertisements.
5. A tax on amusements.
6. A tax on any specified luxury.
7. A registration fee.
8. A stamp duty other than duties of which the amount is fixed by Indian legislation.

SCHEDULE II

(In this Schedule the word 'tax' includes a cess, rate, duty or fee.)

1. A toll.
2. A tax on land or land values.
3. A tax on buildings.
4. A tax on vehicles or boats.
5. A tax on animals.
6. A tax on menials and domestic servants.
7. An octroi.
8. A terminal tax on goods imported into, or exported from, a local area, save where such tax is first imposed in a local area in which an octroi was not levied on or before the 6th July, 1917.
9. A tax on trades, professions and callings.
10. A tax on private markets.
11. A tax imposed in return for services rendered, such as—
    (*a*) a water rate;

(*b*) a lighting rate ;
(*c*) a scavenging, sanitary or sewage rate ;
(*d*) a drainage tax ; and
(*e*) fees for the use of markets and other public conveniences.

APPENDIX F

THE LOCAL LEGISLATURES (PREVIOUS SANCTION) RULES.[1]

Short title and commencement.

1. (1) These rules may be called the Local Legislatures (Previous Sanction) Rules.

(2) They shall come into force on a date to be appointed by the Governor-General in Council, with the approval of the Secretary of State in Council, and different dates may be appointed for different parts of India.

Laws requiring previous sanction.

2. A local legislature may not repeal or alter, without the previous sanction of the Governor-General,—

(1) any law made by any authority in British India before the commencement of the Indian Councils Act, 1861: provided that the Governor-General in Council may, by notification in *The Gazette of India*, declare that this provision shall not apply to any such law which he may specify, and if he does so, previous sanction shall not thereafter be necessary to the alteration or repeal of that law ; or

(2) any law specified in the Schedule to these rules or any law made by the Governor-General in Council amending a law so specified.

SCHEDULE

Year.	No.	Short title.
1860	XLV	The Indian Penal Code, 1860.
1864	III	The Foreigners Act, 1864.
1865	III	The Carriers Act, 1865.
,,	X	The Indian Succession Act, 1865.[2]
,,	XV	The Parsi Marriage and Divorce Act, 1865.
..	XXI	The Parsi Intestate Succession Act, 1865 [3]

[1] See Notification No. 312-S. in *The Gazette of India* (Extra.), December 16, 1920 ; see also *The Bengal Legislative Council Manual* 1927, pp. 156–57.
[2] Consolidated into the Indian Succession Act, 1925, and consequently repealed. [3] *Ibid.*

Year.	No.	Short title.
1866	XXI	The Native Converts' Marriage Dissolution Act, 1866.
,,	XXVIII	The Trustees' and Mortgagees' Powers Act, 1866.
1867	XXV	The Press and Registration of Books Act, 1867.
1869	IV	The Indian Divorce Act, 1869.
1870	XXI	The Hindu Wills Act, 1870.[1]
1872	I	The Indian Evidence Act, 1872.
,,	III	The Special Marriage Act, 1872.
,,	IX	The Indian Contract Act, 1872.
,,	XV	The Indian Christian Marriage Act, 1872.
1873	X	The Indian Oaths Act, 1873.
1874	III	The Married Women's Property Act, 1874.
,,	XIV	The Scheduled Districts Act, 1874.
,,	XV	The Laws Local Extent Act, 1874.
1875	IX	The Indian Majority Act, 1875.
1877	I	The Specific Relief Act, 1877.
1881	V	The Probate and Administration Act, 1881.[2]
,,	XIII	The Fort William Act, 1881.
,,	XXVI	The Negotiable Instruments Act, 1881.
1882	II	The Indian Trusts Act, 1882.
,,	IV	The Transfer of Property Act, 1882.
,,	VII	The Powers of Attorney Act, 1882.
1889	IV	The Indian Merchandise Marks Act, 1889.
,,	VII	The Succession Certificate Act, 1889.
,,	XV	The Indian Official Secrets Act, 1889.
1890	VIII	The Guardians and Wards Act, 1890.
,,	IX	The Indian Railways Act, 1890.
1891	XVIII	The Bankers' Books Evidence Act, 1891.
1895	XV	The Crown Grants Act, 1895.
1897	III	The Epidemic Diseases Act, 1897.
,,	X	The General Clauses Act, 1897.
,,	XIV	The Indian Short Titles Act, 1897.
1898	V	The Code of Criminal Procedure, 1898.
,,	IX	The Live-stock Importation Act, 1898.
1899	IX	The Indian Arbitration Act, 1899.
1903	XIV	The Indian Foreign Marriage Act, 1903.
,,	XV	The Indian Extradition Act, 1903.
1908	V	The Code of Civil Procedure, 1908.

[1] Consolidated into the Indian Succession Act of 1925, and, consequently, repealed. [2] *Ibid.*

Year.	No.	Short title.
1908	IX	The Indian Limitation Act, 1908.
,,	XIV	The Indian Criminal Law Amendment Act, 1908.
,,	XV	The Indian Ports Act, 1908.
,,	XVI	The Indian Registration Act, 1908.
1909	III	The Presidency-towns Insolvency Act, 1909.
,,	IV	The Whipping Act, 1909.
,,	VII	The Anand Marriage Act, 1909.
1910	I	The Indian Press Act, 1910.[1]
1911	X	The Seditious Meetings Act, 1911.
1912	IV	The Indian Lunacy Act, 1912.
,,	V	The Provident Insurance Societies Act, 1912.
,,	VI	The Indian Life Assurance Companies Act, 1912.
1913	VI	The Mussalman Wakf Validating Act, 1913.
,,	VII	The Indian Companies Act, 1913.
1914	II	The Destructive Insects and Pests Act, 1914.
,,	III	The Indian Copyright Act, 1914.
,,	IX	The Local Authorities Loans Act, 1914.
1916	XV	The Hindu Disposition of Property Act, 1916.
1917	I	The Inland Steam-Vessels Act, 1917.
,,	XXVI	The Transfer of Property (Validating) Act, 1917.
1918	X	The Usurious Loans Act, 1918.
1919	XI	The Anarchical and Revolutionary Crimes Act, 1919.[2]
1920	V	The Provincial Insolvency Act, 1920.
,,	X	The Indian Securities Act, 1920.
,,	XIV	The Charitable and Religious Trusts Act, 1920.

APPENDIX G

THE RESERVATION OF BILLS RULES[3]

Short title and commencement.

1. (1) These rules may be called the Reservation of Bills Rules.

(2) They shall come into force on a date to be appointed by the Governor-General in Council, with the approval of

[1] It has been repealed.
[2] *Ibid.*
[3] See Notification, No. 313-S. in *The Gazette of India* (Extra.), December 16, 1920; see also *The Bengal Legislative Council Manual*, 1927, pp. 158–59.

the Secretary of State in Council, and different dates may be appointed for different parts of India.

Bills which must be reserved.

2. The Governor of any Governor's province shall reserve, for the consideration of the Governor-General, any Bill which has been passed by the Legislative Council of the province and is presented to the Governor for his assent, if the Bill appears to the Governor to contain provisions in respect of which the Bill has not been previously sanctioned by the Governor-General under sub-section (3) of section 80A of the Government of India Act—

(*a*) affecting the religion or religious rites of any class of British subjects in British India, or,

(*b*) regulating the constitution or functions of any University, or

(*c*) having the effect of including within a transferred subject matters which have hitherto been classified as reserved subjects, or

(*d*) providing for the construction or management of a light or feeder railway or tramway other than a tramway within municipal limits, or

(*e*) affecting the land revenue of a province either so as to—

(*a*) prescribe a period or periods within which any temporarily-settled estate or estates may not be re-assessed to land revenue, or

(*b*) limit the extent to which the assessment to land revenue of such an estate or estates may be made or enhanced, or

(*c*) modify materially the general principles upon which land revenue has hitherto been assessed,

if such prescription, limitation or modification appears to the Governor to be likely seriously to affect the public revenues of the province.

Bills which may be reserved.

3. The Governor of any Governor's province may reserve for the consideration of the Governor-General, any Bill which has been passed by the Legislative Council of the province and is presented to the Governor for his assent, if any provisions of the Bill in respect of which it has not been previously sanctioned by the Governor-General under sub-section (3) of section 80A of the Government of India Act, appear to the Governor—

(1) to affect any matter wherewith he is specially charged under his Instrument of Instructions, or

(2) to affect any central subject, or

(3) to affect the interests of another province.

APPENDIX H

NON-OFFICIAL (DEFINITION) RULES[1]

Short title and commencement.

1. (1) These rules may be called the Non-Official (Definition) Rules.

(2) They shall come into force on a date to be appointed by the Governor-General in Council, with the approval of the Secretary of State in Council, and different dates may be appointed for different parts of India.

Certain persons not to be treated as officials for purposes of the Government of India Act.

2. The holder of any office in the civil or military service of the Crown, if the office is one which does not involve both of the following incidents, namely, that the incumbent—

(1) is a whole-time servant of Government, and

(2) is remunerated either by salary or fees,

shall not be treated as an official for any of the purposes of the Government of India Act.

Decision of Governor-General in Council to be final.

3. If any question arises, whether any officer is or is not a whole-time servant of Government for the purposes of Rule 2, the decision of the Governor-General in Council shall be final.

APPENDIX I

A. RULES[2] RELATING TO EXPENDITURE BY THE GOVERNMENT OF INDIA ON SUBJECTS OTHER THAN PROVINCIAL

1. The previous sanction of the Secretary of State in Council is necessary—

(1) To the creation of any new, or the abolition of any existing, permanent post, or to the increase or reduction of the pay drawn by the incumbent of any permanent post, if the post in either case is one which would ordinarily be held by a member of one of the services

[1] *Vide The Bengal Legislative Council Manual*, 1927, pp. 159-60.

[2] The Government of India's Finance Department Resolution No. 1448-E. A., dated the 29th September, 1922, as subsequently amended by Resolution No. 518-Ex., dated the 2nd March, 1923, and Resolution No. F.-115-7-Ex.-25 (Finance Dept.), dated Simla, the 29th June, 1926.—*Vide* also *Book of Financial Powers* (Government of India), 1927, pp. 1-5, *The Calcutta Gazette*, July 15, 1926, Part IA, p. 213, and *The Gazette of India*, July 3, 1926.

named in the Schedule or by an officer holding the King's commission ;,or to the increase or reduction of the cadre of any of those services, or of a service ordinarily filled by officers holding the King's commission.

(2) To the creation of a permanent post on a maximum rate of pay exceeding Rs. 1,200 a month, or the increase of the maximum pay of a sanctioned permanent post to an amount exceeding Rs. 1,200 a month.

(3) To the creation of a temporary post on pay exceeding Rs. 4,000 a month, or the extension beyond a period of two years (or, in the case of a post for settlement operations, of five years) of a temporary post or deputation on pay exceeding Rs. 1,200 a month.

[*Note.*—If the holder of a temporary post created by the Governor-General in Council, the rupee pay of which does not exceed Rs. 3,000, would have drawn overseas pay in sterling if he had not been appointed to this post, the Governor-General in Council may permit the holder of that post to draw, in addition to the rupee pay sanctioned for the post, the overseas pay in sterling not exceeding the amount to which he would have been entitled, had he not been appointed to the temporary post.]

(4) To the grant to any Government servant or the family or other dependants of any deceased Government servant of an allowance, pension or gratuity which is not admissible under rules made under section 96B of the Government of India Act, or under Army Regulations, India, except in the following cases :—

(*a*) compassionate gratuities to the families of Government servants left in indigent circumstances, subject to such annual limit as the Secretary of State in Council may prescribe ; and

(*b*) pensions or gratuities to Government servants wounded or otherwise injured while employed in Government service, or to the families of Government servants dying as the result of wounds or injuries sustained while employed in such service, granted in accordance with such rules as have been or may be laid down by the Secretary of State in Council in this behalf ; and

(*c*) re-grant of an hereditary political pension, in whole or in part, to an heir who is in Government employ or in receipt of a service pension.

(5) To any expenditure on a measure other than a Military Works project costing more than Rs. 5,00,000 (initial plus one year's

recurring) and involving outlay chargeable to the Army or Marine estimates.

(6) (*a*) To any expenditure on the inception of a Military Works project which is estimated to cost, or forms part of a scheme which is estimated to cost, more than Rs. 10,00,000 :

(*b*) To any expenditure on a Military works project in excess of the original sanctioned estimate, if—

(i) the excess is more than 10 per cent. of the original sanctioned estimate, and the estimated cost of the project thereby becomes more than Rs. 10,00,000 :

(ii) if the original estimate has been sanctioned by the Secretary of State, and the excess is more than 10 per cent of that estimate, or more than Rs. 10,00,000 :

(*c*) To any expenditure on a Military works project, in excess of a revised or completion estimate sanctioned by the Secretary of State :

Provided that, for the purposes of clauses (*b*) (ii) and (*c*) of the rule, if any section accounting for 5 per cent. or more of the estimated cost of a project sanctioned by the Secretary of State is abandoned, the estimated cost of the works in that section shall be excluded from the total sanctioned estimate of the project for the purpose of determining whether the Secretary of State's sanction is necessary.

(7) To any expenditure on the purchase of imported military stores otherwise than in accordance with such rules as may be made in this behalf by the Secretary of State in Council ;

(8) To any expenditure otherwise than in accordance with such rules as may have been laid down in this behalf by the Secretary of State in Council upon—

(*a*) the erection, alteration, furnishing, or equipment of a church ; or a grant-in-aid towards the erection, alteration, furnishing or equipment of a church not wholly constructed out of public funds ; or

(*b*) the provision of additions to the list of special saloon and inspection railway carriages reserved for the use of high officials ; or

(*c*) the staff, household and contract allowances, or the residences and furniture provided for the use of the Governor-General ; or

(*d*) railways.

2. The foregoing rules do not apply to expenditure in time of war with a view to its prosecution. The Government of India have

full powers with regard to such expenditure, subject only to the general control of war operations which is exercised by the Secretary of State for India in consultation with His Majesty's Government; to the necessity of obtaining the sanction of the Secretary of State in Council to really important special measures required to carry out those operations, where, in the judgment of the Government of India, time permits a previous reference to him; and to the obligation to keep him as fully informed as circumstances allow of their important actions.

THE SCHEDULE

(1) Indian Civil Service.
(2) Indian Police Service.
(3) Indian Forest Service.
(4) Indian Educational Service.
(5) Indian Agricultural Service.
(6) Indian Service of Engineers.
(7) The Indian Veterinary Service.
(8) Indian Medical Service.
(9) Imperial Customs Service.
(10) Indian Audit and Accounts Service.
(11) Superintendents and Class I of the Survey of India Department.
(12) The Superior Staff of the Geological Survey of India Department.
(13) The superior telegraph branch of the Posts and Telegraphs Department.
(14) The State Railway Engineering Service.
(15) The superior staff of the Mint and Assay Department.
(16) The Archæological Department.
(17) Any other service declared by the Secretary of State in Council to be included in this schedule.

B. Rules[1] relating to Expenditure by a Governor in Council on Provincial Reserved Subjects

1. The previous sanction of the Secretary of State in Council is necessary—

(1) To the creation of any new or the abolition of any existing permanent post, or to the increase or reduction of the pay drawn by

[1] The Government of India's Finance Department Resolution No. 1449-E.A., September 29, 1922 (*The Gazette of India*, October

the incumbent of any permanent post, if the post in either case is one which would ordinarily be held by a member of an all-India service or by an officer holding the King's Commission, or to the increase or reduction of the cadre of an all-India Service.

(2) To the same as (2) in A above.[1]

(3) To the same as (3) in A above.[2]

[*Note.*—If the holder of a temporary post created by the Governor in Council, the rupee pay of which does not exceed Rs. 3,000, would have drawn overseas pay in sterling if he had not been appointed to this post, the Governor in Council may permit the holder of that post to draw, in addition to the rupee pay sanctioned for the post, the overseas pay in sterling not exceeding the amount to which he would have been entitled, had he not been appointed to the temporary post.]

(4) To the same as (4) in A above, with the words 'or under Army Regulations' and clause (*c*) left out.[3]

(5) To any expenditure on the purchase of imported stores or stationery, otherwise than in accordance with such rules as may be made in this behalf by the Secretary of State in Council.

(6) To capital expenditure upon irrigation and navigation works, including docks and harbours, and upon projects for drainage, embankment and water-storage and the utilization of water power, in any of the following cases, namely :—

(*a*) where the project concerned materially affects the interests of more than one local Government ;

(*b*) where the original estimate exceeds 50 lakhs of rupees ;

(*c*) where a revised estimate exceeds by 15 per cent. an original estimate sanctioned by the Secretary of State in Council ; and

(*d*) where a further revised estimate is proposed, after one revised estimate has already been sanctioned by the Secretary of State in Council.

(7) To a revision of permanent establishment involving additional establishment charges exceeding Rs. 5 lakhs a year ; provided that,

7, 1922, Part I, pp. 1216–17) as amended by the Finance Department (Government of India) Resolution No. 2119-Ex., dated Simla, the 18th September, 1923 (*The Gazette of India*, September 29, 1923), and Resolution No. F. 115-8-Ex.,—25, dated Simla, June 29, 1926 (*The Calcutta Gazette*, July 15, 1926 or *The Gazette of India*, July 3, 1926).

[1] See page 572 *ante*. [2] *Ibid*.

[3] *Ibid*.

if a resolution has been passed by the Legislative Council recommending an increase of establishment charges for this purpose, the sanction of the Secretary of State in Council shall not be required unless the expenditure so recommended exceeds 15 lakhs a year.

(8) To any increase of the contract, sumptuary or furniture grant of a Governor.

(9) To expenditure upon original works on the residences of a Governor exceeding Rs. 50,000 in any year. The Governor-General in Council shall, if necessary, decide whether a charge falls under the head of original works.

(10) To any expenditure upon railway carriages or water-borne vessels specially reserved for the use of high officials, otherwise than in connection with the maintenance of such carriages or vessels already set apart with the sanction of the Secretary of State in Council for the exclusive use of a Governor.

2. (1) Every application for the sanction of the Secretary of State in Council required by Rule 1 shall be addressed to the Governor-General in Council, who shall, save as hereinafter provided, forward the same with his recommendations, and with such further explanations of the proposal as he may have seen fit to require from the local Government, to the Secretary of State in Council.

(2) If the application relates—

(*a*) to the grant in an individual case of any increase in pay, or

(*b*) to the creation or extension of a temporary post,

the Governor-General in Council may at his discretion, on behalf of the Secretary of State in Council, sanction the proposal, or may, and, if he dissents from the proposal, shall, forward the application with his recommendations, and with such further explanations of the proposal as he may have seen fit to require from the local Government, for the orders of the Secretary of State in Council.

APPENDIX J

STANDING COMMITTEES

Under the orders [1] of the Governor-General, Standing Committees, consisting of members of the Indian Legislature, have been attached to the following departments of the Government of India :—

(1) the Home Department ;

(2) the Departments of Commerce and Industries ; and

[1] See the Government of India Notification No. F.-49, dated August 22, 1922. Vide *The Gazette of India*, August 26, 1922, Part I, pp. 1052–53.

(3) the Department of Education and Health.

The Member of the Governor-General's Executive Council in charge of the department to which a Standing Committee is attached is the Chairman of the Committee. He may, however, depute an officer to act as Chairman on his behalf. A Secretary or a Deputy Secretary to the Government of India in the department concerned acts as Secretary to the Committee.

A Standing Committee consists of five members of the Indian Legislature of whom two must be members of the Council of State, and three members of the Legislative Assembly. The members of each Committee are nominated, subject to the approval of the Governor-General, by the Member in charge of the department to which the Committee is assigned, 'from separate panels consisting of such number of members, not less than ten and not more than fifteen, as the Governor-General may direct.' The panels are elected by the two Chambers of the Legislature for each Committee according to the principle of proportional representation by means of a single transferable vote. The term of office of the members of each Committee is one year, and if they are summoned to attend a meeting at a time when the Indian Legislature is not sitting, they are entitled to receive the allowances admissible to them for attendance at meetings of the Legislature.

The following subjects are laid before the Standing Committees :—

"(1) All Bills introduced or proposed to be introduced, by non-official members of the Legislature, and legislative proposals which the department concerned intends to undertake and on which the Member in charge of the department desires the advice of the Committee.

(2) Reports of Committees and Commissions on which the Indian Legislature is not adequately represented and on which the Member in charge of the department desires the advice of the Committee.

(3) Major questions of general policy on which the Member in charge of the department desires the advice of the Committee.

(4) Annual Reports."

It is provided, however, that in cases of urgency and for other reasons a reference to a Standing Committee may be dispensed with by the department concerned ; and that the following cases are to be excluded from the purview of the Committee :—

(1) cases concerning appointments ; and

(2) all cases which the Member in charge of the department

concerned considers cannot be placed before the Committee consistently with the public interest.

The functions of the Standing Committees are purely advisory and their proceedings are strictly confidential. No press representatives are allowed to attend any meeting of a Committee.

A Standing Committee meets as and when the Member in charge of the department to which it is attached, directs. The meeting is summoned by the Secretary of the department. The agenda of each meeting are drawn up and circulated by the Secretary, together with a memorandum explaining the nature of each item of business, and copies of such papers as the Member in charge of the department directs to be supplied to the Committee. Such papers have to be returned by the members of the Committee to the Secretary at the close of the meeting. When the Committee meets, the Secretary may be requested by the Member in charge to explain each item of business. The Chairman then invites a discussion and the Secretary notes on the departmental file the general opinion of the Committee.

In addition to the Standing Committees mentioned above, there are the Standing Finance Committee, the Standing Finance Committee for Railways, the Standing Committee for Emigration and the Central Advisory Council for Railways. The procedure of these Committees is governed by the rules under which they are constituted. The Standing Finance Committee consists of members, not exceeding fourteen, elected by the Legislative Assembly and a Government Member, usually the Finance Member, who is the Chairman of the Committee. It (*a*) 'examines all proposals for new votable expenditure in all departments of the Government of India; (*b*) sanctions allotments out of lump sum grants; (*c*) suggests retrenchments and economy in expenditure; and (*d*) generally helps the Finance Department of the Government of India by advice in such cases as may be referred to it by that department.' Its powers are, as in the case of other Standing Committees, advisory; but it undoubtedly exercises a wholesome influence over the expenditure of public revenues.

Rule for Standing Committees in Bengal.

Standing Committees have been attached, under the orders of the Governor, to the following departments of the Government of Bengal[1] :—

(1) Police.

(2) Judicial and Jails.

[1] *Vide The Bengal Legislative Council Manual*, 1927, pp. 344–45.

(3) Local Self-Government.
(4) Medical and Public Health.
(5) Education.
(6) Commerce and Marine.
(7) Public Works (Roads and Buildings).
(8) Irrigation.
(9) Agriculture (including Civil Veterinary, Fisheries and Co-operative Credit).
(10) Excise.
(11) Land Revenue.

Each Standing Committee consists of the Member or Minister in charge of the department to which the Committee is attached, the head of the department, where there is one, and four non-official members of the local Legislative Council. The Member or Minister in charge is the Chairman of the Committee and the departmental Secretary is its Secretary. The four non-official members are appointed by the Governor 'after consideration of the names of the persons' elected for the Committee by the Council on the basis of the single transferable vote. They are entitled to the allowances payable under the Legislative Council Rules if they are summoned at a time when the Council is not sitting.

The following matters must be laid before the Standing Committee attached to a department, namely :—

(1) all major questions of departmental policy ;
(2) all schemes involving large expenditure ;
(3) annual Reports issued by the department ; and
(4) any other matter concerning the department on which the Member or Minister in charge may desire its opinion.

It is provided, however, that in cases of urgency a reference to the Committee may be dispensed with, and that the following cases will be excluded from its purview :—

(1) 'cases concerning appointments ; and
(2) all cases which the Member or Minister in charge, with the concurrence of the Governor, considers cannot be submitted to it consistently with the public interest.'

The meetings of the Committee are summoned by the Secretary concerned under the direction of the Member or Minister in charge. The agenda are 'drawn up and circulated by the Secretary together with a memorandum explaining the nature of each item of business, and copies of such papers as the Member or Minister in charge directs to be furnished to the Committee.' At every meeting

of the Committee the Secretary explains each case brought before it and is entitled to take part in the discussion that follows. He then notes on the departmental file the general opinion of the Committee.

The powers of the Standing Committees are advisory only, and their proceedings are confidential.

APPENDIX K

OFFICES RESERVED TO THE INDIAN CIVIL SERVICE

A.—Offices under the Governor-General in Council.

1. The offices of Secretary, Joint Secretary and Deputy Secretary in every department except the Army, Marine, Education, Foreign, Political and Public Works Departments: provided that if the office of Secretary or Deputy Secretary in the Legislative Department is filled from among the members of the Indian Civil Service, then the office of Deputy Secretary or Secretary in that department, as the case may be, need not be so filled.

2. Three offices of Accountants-General.

B.—Offices in the provinces which were known in the year 1861 as 'Regulation Provinces.'

The following offices, namely :—

(1) Member of the Board of Revenue.

(2) Financial Commissioner.

(3) Commissioner of Revenue.

(4) Commissioner of Customs.

(5) Opium Agent.

(6) Secretary in every department except the Public Works or Marine Department.

(7) Secretary to the Board of Revenue.

(8) District or Sessions Judge.

(9) Additional District or Sessions Judge.

(10) District Magistrate.

(11) Collector of Revenue or Chief Revenue Officer of a district.

APPENDIX L

Provisions of the Government of India Act which may be repealed or altered by the Indian Legislature.

(Fifth Schedule to the Act)

Section	Subject
62	Power to extend limits of presidency towns.

Section		Subject
106	... ...	Jurisdiction, powers and authority of High Courts.
108 (1)	... ...	Exercise of jurisdiction of High Court by single judges or division courts.
109	... ...	Power for Governor-General in Council to alter local limits of jurisdiction of High Courts, etc.
110	... ...	Exemption from jurisdiction of High Courts.
111	... ...	Written order by Governor-General in Council a justification for act in High Court.
112	... ...	Law to be administered in cases of inheritance, succession, contract and dealing between party and party.
114 (2)	... ...	Powers of Advocate-General.
124 (1)	... ...	Oppression.
124 (4)—so far as it relates to persons employed or concerned in the collection of revenue or the administration of justice.		Trading.
124 (5)—so far as it relates to persons other than the Governor-General, a Governor, or a Member of the Executive Council of the Governor-General or of a Governor.		Receiving presents.
125	... ...	Loans to Princes or Chiefs.
126	... ...	Carrying on dangerous correspondence.
128	... ...	Limitation for prosecutions in British India.
129	... ...	Penalties.

APPENDIX M

INSTRUCTIONS[1] TO GOVERNORS

Whereas by the Government of India Act provision has been made for the gradual development of self-governing institutions in British

[1] *The Calcutta Gazette* (Extra.), January 3, 1921, pp. 6 and 7.

India with a view to the progressive realization of responsible government in that country as an integral part of Our Empire :

And whereas it is Our will and pleasure that in the execution of the office of Governor in and over the presidency or the province of . . . you shall further the purposes of the said Act to the end that the institutions and methods of Government therein provided shall be laid upon the best and surest foundations, that the people of the said presidency (or province) shall acquire such habits of political action and respect such conventions as will best and soonest fit them for self-government, and that Our authority and the authority of Our Governor-General in Council shall be duly maintained :

Now, therefore, We do hereby direct and enjoin you and declare Our will and pleasure to be as follows :—

1. You shall do all that lies in your power to maintain standards of good administration, to encourage religious toleration, co-operation, and good-will among all classes and creeds, to ensure the probity of public finance and the solvency of the presidency (or province), and to promote all measures making for the moral, social and industrial welfare of the people and tending to fit all classes of the population without distinction to take their due share in the public life and government of the country.

2. You shall bear in mind that it is necessary and expedient that those now and hereafter to be enfranchised shall appreciate the duties, responsibilities and advantages which spring from the privilege of enfranchisement ; that is to say, that those who exercise the power henceforward entrusted to them of returning representatives to the Legislative Council being enabled to perceive the effects of their choice of a representative, and that those who are returned to the Council being enabled to perceive the effects of their votes given therein shall come to look for the redress of their grievances and the improvement of their condition to the working of representative institutions.

3. Inasmuch as certain matters have been reserved for the administration according to law of the Governor in Council, in respect of which the authority of Our Governor-General in Council shall remain unimpaired, while certain other matters have been transferred to the administration of the Governor acting with a Minister, it will be for you so to regulate the business of the Government of the presidency (or province) that, so far as may be possible, the responsibility for each of these respective classes of matters may be kept clear and distinct.

4. Nevertheless, you shall encourage the habit of joint deliberation between yourself, your Councillors and your Ministers in order that the experience of your official advisers may be at the disposal of your Ministers, and that the knowledge of your Ministers as to the wishes of the people may be at the disposal of your Councillors.

5. You should assist Ministers by all the means in your power in the administration of the transferred subjects, and advise them in regard to their relations with the Legislative Council.

6. In considering a Minister's advice and deciding whether or not there is sufficient cause in any case to dissent from his opinion, you shall have due regard to his relations with the Legislative Council and to the wishes of the people of the presidency (or province), as expressed by their representatives therein.

7. But in addition to the general responsibilities with which you are, whether by statute or under this instrument, charged, We do further hereby specially require and charge you—

(1) to see that whatsoever measures are in your opinion necessary for maintaining safety and tranquillity in all parts of your presidency (or province) and for preventing occasions of religious or racial conflict, are duly taken and that all orders issued by Our Secretary of State or by Our Governor-General in Council on Our behalf, to whatever matters relating, are duly complied with ;

(2) to take care that due provision shall be made for the advancement and social welfare of those classes amongst the people committed to your charge, who, whether on account of the smallness of their number, or their lack of educational or material advantages, or from any other cause, specially rely upon Our protection and cannot as yet fully rely for their welfare upon joint political action, and that such classes shall not suffer or have cause to fear neglect or oppression ;

(3) to see that no order of your Government and no Act of your Legislative Council shall be so framed that any of the diverse interests of, or arising from, race, religion, education, social condition, wealth or any other circumstance may receive unfair advantage, or may unfairly be deprived of privileges or advantages which they have heretofore enjoyed or be excluded from the enjoyment of benefits which may hereafter be conferred on the people at large ;

(4) to safeguard all members of Our services employed in the said presidency (or province) in the legitimate exercise of their functions, and in the enjoyment of all recognized rights and privileges,

and to see that your Government order all things justly and reasonably in their regard, and that due obedience is paid to all just and reasonable orders and diligence shown in their execution ;

(5) to take care that, while the people inhabiting the said presidency (or province) shall enjoy all facilities for the development of commercial and industrial undertakings, no monopoly or special privilege, which is against the common interest, shall be established, and no unfair discrimination shall be made in matters affecting commercial or industrial interests.

8. And We do hereby charge you to communicate these Our Instructions to the members of your Executive Council and your Ministers and to publish the same in your presidency (or province) in such manner as you think fit.

APPENDIX N

Instructions to the Governor-General [1]

Instructions to Our Governor-General of India given at Our Court at Buckingham Palace, this 15th day of March, 1921.[2]

Whereas by the Government of India Act it is enacted that the Governor-General of India is appointed by Warrant under Our Royal Sign Manual, and We have by Warrant constituted and appointed a Governor-General to exercise the said office subject to such instructions and directions as he, or Our Governor-General for the time being, shall from time to time receive or have received under Our Royal Sign Manual or under the hand of one of Our Principal Secretaries of State :

And whereas certain instructions were issued under Our Royal Sign Manual to Our said Governor-General bearing date the 19th day of November, 1918 :

And whereas by the coming into operation of the Government of India Act, 1919, it has become necessary to revoke the said instructions and to make further and other provisions in their stead :

Now, therefore, We do by these Our instructions under Our Royal Sign Manual hereby revoke the aforesaid instructions and declare Our pleasure to be as follows :—

I. Our Governor-General for the time being (hereinafter called

[1] See the Government of India Notification No. 1552, dated the 8th June, 1921 in *The Cal. Gaz.*, Part IA, June 22, 1921, pp. 261–62 or in *The Gazette of India*, June 11, 1921, pp. 850–51 ; also the Government of India, Home Department, Notification No. F.—476/26 (Public), dated the 7th August, 1926 (*The Gazette of India*, August 14, 1926, Part I, pp. 902–3).

[2] Also see *ibid*.

Our said Governor-General) shall with all due solemnity cause our Warrant under Our Royal Sign Manual appointing him to be read and published in the presence of the Chief Justice for the time being or, in his absence, of the Senior Judge of one of the High Courts established in British India, and of so many of the Members of the Executive Council of Our said Governor-General as may conveniently be assembled.

Our said Governor-General shall take the Oath of Allegiance and the Oath for the due execution of the Office of Our Governor-General of India, and for the due and impartial administration of Justice in the forms hereto appended; which Oaths the said Chief Justice for the time being or, in his absence, the Senior Judge of one of Our said High Courts shall, and he is hereby required to, tender and administer unto him.

II. And We do authorize and require Our said Governor-General from time to time, by himself or by any other person to be authorized by him in that behalf, to administer to every person who shall be appointed by Us by Warrant under Our Royal Sign Manual to be a Governor of one of Our presidencies or provinces in India, and to every person who shall be appointed to be a Lieutenant-Governor or a Chief Commissioner, the Oaths of Allegiance and of Office in the said forms.

III. And We do authorize and require Our said Governor-General from time to time, by himself or by any other person to be authorized by him in that behalf, to administer to every person who shall be appointed by Us by Warrant under Our Royal Sign Manual or by the Secretary of State in Council of India to be a Member of the Governor-General's Executive Council or a Member of a Governor's Executive Council, and to every person who shall be appointed to be a Member of a Lieutenant-Governor's Executive Council, and to every person whom any of Our said Governors shall appoint to be a Minister, the Oaths of Allegiance and of Office in the said forms together with the Oath of Secrecy hereto appended.

IV. And We do further direct that every person who under these instructions shall be required to take an Oath, may make an affirmation in place of an Oath if he has any objection to making an Oath.

V. And We do hereby authorize and empower Our said Governor-General in Our name and on Our behalf to grant to any offender convicted in the exercise of its criminal jurisdiction by any Court of Justice within Our said Territories a pardon either free or subject to such lawful conditions as to him may seem fit.

V-B (?) And We do hereby authorize and empower Our said Governor-General in Our name and on Our behalf for sufficient cause to him appearing and with the concurrence of one of Our Principal Secretaries of State to suspend from the exercise of his office any person appointed by Us or with Our approval to an office in India against whom misbehaviour shall have been alleged, and to constitute a tribunal to enquire into the truth of such allegation in order that Our pleasure may be signified on its finding under Our Royal Sign Manual.

VI. And inasmuch as the policy of Our Parliament is set forth in the Preamble to the said Government of India Act, 1919, We do hereby require Our said Governor-General to be vigilant that this policy is constantly furthered alike by his Government and by the local Governments of all Our presidencies and provinces.

VII. In particular it is Our will and pleasure that the powers of superintendence, direction and control over the said local Governments vested in Our said Governor-General and in Our Governor-General in Council shall, unless grave reason to the contrary appears, be exercised with a view to furthering the policy of the local Governments of all Our Governors' provinces, when such policy finds favour with a majority of the Members of the Legislative Council of the province.

VIII. Similarly, it is Our will and pleasure that Our said Governor-General shall use all endeavour consistent with the fulfilment of his responsibilities to Us and to Our Parliament for the welfare of Our Indian subjects, that the administration of the matters committed to the direct charge of Our Governor-General in Council may be conducted in harmony with the wishes of Our said subjects as expressed by their representatives in the Indian Legislature, so far as the same shall appear to him to be just and reasonable.

IX. For above all things it is Our will and pleasure that the plans laid by Our Parliament for the progressive realization of responsible government in British India as an integral part of Our Empire may come to fruition, to the end that British India may attain its due place among Our Dominions. Therefore We do charge Our said Governor-General by the means aforesaid and by all other means which may to him seem fit to guide the course of Our subjects in India whose governance We have committed to his charge so that, subject on the one hand always to the determination of Our Parliament, and, on the other hand, to the co-operation of those on whom new opportu nitie

of service have been conferred, progress toward such realization may ever advance to the benefit of all Our subjects in India.

X. And We do hereby charge Our said Governor-General to communicate these Our Instructions to the Members of his Executive Council, and to publish the same in such manner as he may think fit.

APPENDIX O [1]

PROVISIONS OF THE GOVERNMENT OF INDIA (LEAVE OF ABSENCE) ACT, 1924.

[Section 1 of the Government of India (Leave of Absence) Act, 1924, has been incorporated in the Government of India Act as Sections 86 and 87 with the consequential changes in the latter Act; similarly, Section 2 of the former Act has been incorporated in the latter as its Sub-sections (4) and (4A) of Section 92.]

Power to grant leave of absence to Governor-General.

86. (1) The Secretary of State in Council may grant to the Governor-General and, on the recommendation of the Governor-General in Council, to the Commander-in-Chief, leave of absence for urgent reasons of public interest, or of health or of private affairs.

(2) The Secretary of State in Council may, on the recommendation of the Governor-General in Council, grant to a Governor, and the Governor-General in Council, or a Governor in Council or a Lieutenant-Governor in Council, as the case may be, may grant to any member of his Executive Council (other than the Commander-in-Chief) leave of absence for urgent reasons of health or of private affairs.

(3) Leave of absence shall not be granted to any person in pursuance of this section for any period exceeding four months nor more than once during his tenure of office:

Provided that the Secretary of State in Council may, if he thinks fit, extend any period of leave so granted, but in any such case the reasons for the extension shall be set forth in a minute signed by the Secretary of State and laid before both Houses of Parliament.

(4) Where leave of absence is granted to any person in pursuance

[1] See *The Government of India Act* published by the Government of India, pp. 118*a*, 118*b* and 119; also pp. 122–23; also pp. 228*a* and 228*b*.

of this section, he shall retain his office during the period of leave as originally granted, or, if that period is extended by the Secretary of State in Council, during the period as so extended, but, if his absence exceeds that period, his office shall be deemed to have become vacant in the case of a person granted leave for urgent reasons of public interest as from the termination of that period and in any other case as from the commencement of his absence.

(5) Where a person obtains leave of absence in pursuance of this section, he shall be entitled to receive during his absence such leave-allowances as may be prescribed by rules made by the Secretary of State in Council, but, if he does not resume his duties upon the termination of the period of the leave, he shall, unless the Secretary of State in Council otherwise directs, repay, in such manner as may be so prescribed as aforesaid, any leave allowances received under this sub-section.

(6) If the Governor-General or the Commander-in-Chief is granted leave for urgent reasons of public interest, the Secretary of State in Council may, in addition to the leave allowances to which he is entitled under this section, grant to him such further allowances in respect of travelling expenses as the Secretary of State in Council may think fit.

(7) Rules made under this section shall be laid before both Houses of Parliament as soon as may be after they are made.

Acting appointments during the absence of the Governor-General, etc. on leave.

87. (1) Where leave is granted in pursuance of the foregoing section to the Governor-General, or to the Commander-in-Chief, or to a Governor, a person shall be appointed to act in his place during his absence, and the appointment shall be made by His Majesty by warrant under the Royal Sign Manual. The person so appointed during the absence of the Commander-in-Chief may, if the Commander-in-Chief was a member of the Executive Council of the Governor-General, be also appointed by the Governor-General in Council to be a temporary member of that Council.

(2) The person so appointed shall, until the return to duty of the permanent holder of the office, or, if he does not return, until a successor arrives, hold and execute the office to which he has been appointed and shall have and may exercise all the rights and powers thereof and shall be entitled to receive the emoluments and advantages appertaining to the office, foregoing the emoluments and advantages (if any) to which he was entitled at the time of his being appointed to that office.

(3) When during the absence on leave of the Governor-General a Governor is appointed to act in his place, the provisions of this section relating to the appointment of a person to act in the place of a Governor to whom leave of absence has been granted in pursuance of the foregoing section shall apply in the same manner as if leave of absence had been so granted to the Governor.

Temporary vacancy in the office of member of an Executive Council.

92. (4) Until the return to duty of the member (of the Executive Council[1]) so incapable or absent, the person temporarily appointed shall hold and execute the office to which he has been appointed, and shall have and may exercise all the rights and powers thereof, and shall be entitled to receive the emoluments and advantages appertaining to the office, foregoing the emoluments and advantages (if any) to which he was entitled at the time of his being appointed to that office.

(4A) When a member of an Executive Council is by infirmity or otherwise rendered incapable of acting or attending to act as such and a temporary member of council is appointed in his place, the absent member shall be entitled to receive half his salary for the period of his absence.

MONTHLY RATES OF LEAVE ALLOWANCES PAYABLE[2]

	RS.	A.	P.
Governor-General	6,000	0	0
Commander-in-Chief and Governors (other than the Governors of the Central Provinces and Assam) ...	4,000	0	0
Governor of the Central Provinces	3,000	0	0
Governor of Assam	2,750	0	0
Member of the Governor-General's Executive Council ...	3,333	5	4
Member of the Executive Council of the Governor of Bengal, Madras, Bombay or the United Provinces ...	2,666	10	8
Member of the Executive Council of the Governor of the Punjab, Bihar and Orissa, or Burma	2,500	0	0
Member of the Executive Council of the Governor of the Central Provinces	2,000	0	0
Member of the Executive Council of the Governor of Assam	1,750	0	0

[1] See Section 92 of the Government of India Act.

[2] Schedule to Rules under Section 86 of the Government of India Act. See pages 228*a* and 228*b* of *The Government of India Act* published by the Government of India.

APPENDIX P

A. Manner of determining by ballot the relative precedence of notices of Bills and Resolutions.

THE BENGAL LEGISLATIVE COUNCIL[1]

(1) All non-official members, when giving notice for the introduction of Bills or the moving of resolutions, will state in the notice the order of precedence in which they place the motions of which they are giving notice. If they send in more than one notice, the motion or motions contained in the earlier notice will take priority over other motions of the same member of which subsequent notice is given, unless the member sends express written intimation to the contrary. If notice of two or more motions is given by a member at one time and no priority is stated between them, the motions will not be considered for priority until the ballot held under rule (8) below.

(2) On such day and at such time as the President may prescribe in this behalf, balloting will take place for priority of non-official Bills and Resolutions. Members may attend at the time of the ballot if they wish, but are not bound to do so.

(3) The name of each member who has given notice of one or more motions (Bills or Resolutions) shall be entered in alphabetical order by the Secretary on the ballot paper.

(4) Slips of paper bearing corresponding numbers will be folded up and placed in the ballot box.

(5) The Registrar of the Council, having shuffled the slips of paper, will draw them out one by one and notify to the Secretary the numbers that have been drawn out.

(6) (i) The Secretary shall thereupon announce, in order of drawing, the names of the members to whose signatures the numbers are attached upon the ballot paper, and shall enter the notices in the list of business in the order arrived at by ballot:

Provided that, as a result of any one ballot, priority will be given to only one motion standing in the name of any one member.

(ii) The list of business will be compiled so as to give, within the time allotted to non-official business by the Governor, such time to bills of non-official members and to resolutions as may be decided by the President. When the number of a member is drawn in the ballot, if the motion to which he has given preference is a bill, that bill will take place in the list of business among the bills

[1] See *The Bengal Legislative Council Manual*, 1927, pp. 312–15.

according to the order of drawing, and if it is a resolution, then it will similarly take place in the list of resolutions.

(7) After a ballot has been taken, if any notices stand over in the names of members whose names have been balloted, a further ballot or ballots shall be taken until all such notices have been disposed of.

(8) Motions of members whose names do not appear on the ballot paper shall be placed after all balloted notices, in the order in which they may be drawn in a final supplementary ballot, conducted on the same lines, except that each motion will be given a number, and that the proviso to order (6) (i) shall not apply.

(9) The President shall, after question-time, announce to the members in meeting the order of non-official business as arrived at by the ballot.

B. Ballot Procedure for determining relative precedence of non-official Bills and Resolutions.

THE LEGISLATIVE ASSEMBLY.[1]

(1) Not less than seventeen days before each day allotted for the disposal of non-official business, the Secretary will cause to be placed in the Assembly Office a numbered list. This list will be kept open for two days, and during those days and at hours when the office is open, any member, who wishes to give or has given notice of a resolution, or has given notice of a Bill, as the case may be, may have his name entered, in the case of a ballot for resolutions, against one number only, or, in the case of a ballot for Bills, against one number for each Bill of which he has given notice, up to the number of three.

(2) The ballot will be held in the Committee room before the Secretary, and any member who wishes to attend may do so.

(3) Papers with numbers corresponding to those against which entries have been made on the numbered list will be placed in a box.

(4) A clerk will take out at hazard from the box one of the papers and the Secretary will call out from the list the corresponding name, which will then be entered on a priority list. This procedure will be carried out till all the numbers or, in the case of a ballot for resolutions, five numbers have been drawn.

[1] Manual of Business and Procedure (L.A.) 1926, p. 122.

(5) Priority on the list will entitle the member to have set down, in the order of his priority for the day with reference to which the ballot is held, any Bill or any resolution, as the case may be, of which he has given the notice required by the rules or standing orders :

Provided that he shall then and there specify such Bill or Bills or such resolution.

APPENDIX Q

Home Department (the Government of India) Notification No. 5123-Public, dated the 8th November, 1927.

The following statement by His Excellency the Viceroy and Governor-General in regard to the appointment of a Statutory Commission with reference to section 84A of the Government of India Act is published for general information.

H. G. HAIG,
Secy. to the Govt. of India.

STATEMENT.

Eight years ago the British Parliament enacted a Statute which regulated the conditions under which India might learn by actual experience whether or not the Western system of representative government was the most appropriate means through which she might attain responsible self-government within the Empire. That Statute never professed to incorporate irrevocable decisions, and recognised that its work must of necessity be reviewed in the light of fuller knowledge with the lapse of years. Parliament accordingly enacted that at the end of ten years, at latest, a Statutory Commission should be appointed to examine and report upon the progress made.

Considerable pressure has during recent years been exercised to secure anticipation of the Statute, but His Majesty's Government has hitherto felt that circumstances in India were not such as to justify, in the interests of India itself, advancement of the date at which the future development of the constitution would be considered. So long as the unwise counsels of political non-co-operation prevailed, it was evident that the conditions requisite for calm appraisement of a complicated constitutional problem were lacking, and that an earlier enquiry would have been likely only to crystallize in opposition two points of view, between which it must be the aim and the duty of statesmanship to effect reconciliation. But there have been signs latterly that, while those who have been foremost in advancing the

claims of India to full self-government have in no way abandoned principles they have felt it their duty to assert, yet there is in many quarters a greater disposition to deal with the actual facts of the situation and to appreciate what I believe to be the most indubitably true, namely, that the differences which exist on these matters are differences of method or pace, and not differences of principle or disagreements as to the goal which we all alike desire to reach.

It is also certain that the review, if it is to be thorough, and deal adequately with the issues that will claim attention, will have much ground to cover, and, both for this stage and for those that will necessarily follow, it is important to ensure a sufficient allowance of time, without unduly postponing the date by which final action could be undertaken.

There is another element in the present position, which is immediately relevant to the question of when the work of the Commission should begin. We are all aware of the great, the unhappily great, part played in the life of India recently by communal tension and antagonism, and of the obstacle thus imposed to Indian political development. It might be argued that in such circumstances it was desirable to delay the institution of the Commission as long as possible, in the hope that this trouble might in the meantime abate. On the other hand it seems not impossible that the uncertainty of what constitutional changes might be imminent may have served to sharpen this antagonism, and that each side may have been, consciously or unconsciously, actuated by the desire to strengthen, as they supposed, their relative position in anticipation of the Statutory Commission. Wherever such activities may first begin, the result is to create a vicious circle, in which all communities are likely to feel themselves constrained to extend their measures of self-defence.

The fact that these fierce antagonisms are irreconcilable with the whole idea of Indian nationalism has not been powerful enough to exercise its influence over great numbers of people in all classes, and I suspect that the communal issue is so closely interwoven in the political, that suspense and uncertainty in regard to the political react rapidly and unfavourably upon the communal situation. Fear is frequently the parent of bad temper, and when men are afraid, as they are to-day, of the effect unknown political changes may have, they are abnormally ready to seek relief from, and an outlet for, their fears in violent and hasty action. In so far as these troubles are the product of suspense, one may hope for some relief through action taken to limit the period of uncertainty.

Having regard to such considerations as these, His Majesty's Government has decided to invite Parliament to advance the date of the enquiry and to assent forthwith to the establishment of the Commission. Subject to the obtaining of this necessary authority, His Majesty's Government hopes that the Commission will proceed to India as early as possible in the New Year for a short visit, returning to India in October for the performance of their main task.

The task of the Commission will be no easy one. In the governing words of the Statute, which will constitute its terms of reference, it will be charged with 'inquiring into the working of the system of government, the growth of education, and the development of representative institutions, in British India, and matters connected therewith, and the Commission shall report as to whether and to what extent it is desirable to establish the principle of responsible government, or to extend, modify, or restrict the degree of responsible government then existing therein, including the question whether the establishment of second chambers of the local legislatures is or is not desirable.'

His Majesty's Government have naturally given careful thought to the most appropriate agency for the conduct of an enquiry so comprehensive and unrestricted.

The question of what should be the composition of the Commission is one to which the answer must inevitably be greatly influenced by the nature of the task which Parliament has to perform in the light of its advice. In order that the decision at which His Majesty's Government have arrived may be fully understood, it is necessary to state in a few words what they conceive that task to be. If it were, simply the drawing up of a constitution which Parliament, which must in any circumstances be the final arbiter, would impose on India from without, the problem would be comparatively simple. But that is not how His Majesty's Government conceive it. The preamble to the Act of 1919 recognized in effect that, with the development of Indian political thought during the last generation, legitimate aspirations towards responsible government had been formed of which account must be taken. His Majesty's present Government desire no less to take account of those aspirations, and their hope is to lay before Parliament—after the investigation into facts prescribed by the Act—conclusions which shall, so far as is practicable, have been reached by agreement with all the parties concerned. It is with this object steadily in view that His Majesty's

Government have considered both the composition of the Commission and the procedure to be followed in dealing with its report.

It would be generally agreed that what is required is a Commission which would be unbiassed and competent to present an accurate picture of facts to Parliament; but it must also be a body on whose recommendations Parliament should be found willing to take whatever action a study of these facts may indicate to be appropriate.

To fulfil the first requirement it would follow that the Commission should be such as may approach its task with sympathy and a real desire to assist India to the utmost of its power, but with minds free from preconceived conclusions on either side. It is, however, open to doubt whether a Commission constituted so as to include a substantial proportion of Indian members, and, as it rightly would, British official members also, would satisfy the first condition of reaching conclusions unaffected by any process of *a priori* reasoning. On the one hand, it might be felt that the desires, natural and legitimate, of the Indian members to see India a self-governing nation could hardly fail to colour their judgment of her present capacity to sustain the rôle. On the other hand, there are those who might hold that British official members would be less than human it their judgment were not in some degree affected by long and close contact with the questions to which they would now be invited to apply impartial minds.

But even after such a Commission had written its report, Parliament would inevitably approach consideration of it with some element of mental reservation due to an instinctive feeling that the advice in more than one case represented views to which the holder was previously committed. It would move uncertainly among conclusions, the exact value of which, owing to unfamiliarity with the minds of their framers, it would feel unable to appraise.

We should, however, be making a great mistake if we supposed that these matters were purely constitutional, or could be treated merely as the subject of judicial investigation. Indian opinion has a clear title to ask that in the elaboration of a new instrument of government, their solution of the problem, or their judgment on other solutions which may be proposed, should be made an integral factor in the examination of the question and be given due weight in the ultimate decision. It is therefore essential to find means by which Indians may be made parties to the deliberations so nearly affecting the future of their country.

Balancing these various considerations, and endeavouring to give

due weight to each, His Majesty's Government have decided upon the following procedure:—

They propose to recommend to His Majesty that the Statutory Commission should be composed as follows:—

Chairman—The Right Hon. Sir John Simon, M. P.; Members—The Viscount Burnham, The Lord Strathcona, The Hon. E. Cadogan, M. P., The Right Hon. Stephen Walsh, M. P., Colonel The Right Hon. George Lane-Fox, M. P., and Major C. R. Attlee, M. P.

His Majesty's Government cannot of course dictate to the Commission what procedure it shall follow, but they are of opinion that its task in taking evidence would be greatly facilitated if it were to invite the Central Legislature to appoint a Joint Select Committee, chosen from its elected and nominated unofficial members, which would draw up its views and proposals in writing and lay them before the Commission for examination in such manner as the latter may decide. This Committee might remain in being for any consultation which the Commission might desire at subsequent stages of the enquiry. It should be clearly understood that the purpose of this suggestion is not to limit the discretion of the Commission in hearing other witnesses.

His Majesty's Government suggest that a similar procedure should be adopted with the Provincial Legislatures.

The vast area to be covered may make it desirable that the task of taking evidence on the more purely administrative questions involved should be undertaken by some other authority, which would be in the closest touch with the Commission. His Majesty's Government suggest that the Commission on arrival in India should consider and decide by what machinery this work may most appropriately be discharged. This will not of course debar the Commission from the advantage of taking evidence itself upon these subjects to whatever extent it may think desirable.

When the Commission has reported and its report has been examined by the Government of India and His Majesty's Government, it will be the duty of the latter to present proposals to Parliament. But it is not the intention of His Majesty's Government to ask Parliament to adopt these proposals without first giving a full opportunity for Indian opinion of different schools to contribute its view upon them.

And to this end it is intended to invite Parliament to refer these proposals for consideration by a Joint Committee of both Houses, and to facilitate the presentation to that Committee both of the view of the

Indian Central Legislature by delegations who will be invited to attend and confer with the Joint Committee, and also of the views of any other bodies whom the Joint Parliamentary Committee may desire to consult.

In the opinion of His Majesty's Government, the procedure contemplated fulfils to a very great extent the requisites outlined above.

Such a Commission, drawn from men of every British political party, and presided over by one whose public position is due to outstanding ability and character, will evidently bring fresh, trained, and unaffected judgment to bear upon an immensely complex constitutional issue.

Moreover, the findings of some of its own members can count in advance upon a favourable reception at the hands of Parliament, which will recognise them to speak from a common platform of thought, and to be applying standards of judgment which Parliament will feel instinctively to be its own. For myself I cannot doubt that the quickest and surest path of those who desire Indian progress is by the persuasion of Parliament, and that they can do this more certainly through members of both Houses of Parliament than in any other way. The Indian nationalist has gained much if he can convince Members of Parliament on the spot, and I would therefore go further and say that if those who speak for India have confidence in the case which they advance on her behalf, they ought to welcome such an opportunity being afforded to as many members of the British Legislature as may be thus to come into contact with the realities of Indian life and politics.

Furthermore, while it is for these reasons of undoubted advantage to all who desire an extension of the Reforms that their case should be heard in the first instance by those who can command the unquestioned confidence of Parliament, I am sanguine enough to suppose that the method chosen by His Majesty's Government will also assure to Indians a better opportunity than they could have enjoyed in any other way of influencing the passage of these great events. For, not only will they, through representatives of the Indian Legislatures, be enabled to express themselves freely to the Commission itself, but it will also be within their power to challenge in detail or principle any of the proposals made by His Majesty's Government before the Joint Select Committee of Parliament, and to advocate their own solutions. It should be observed moreover that at this stage Parliament will not have been asked to express any opinion on particular proposals, and

therefore, so far as Parliament is concerned, the whole field will still be open.

I hope that there will be none, whatever may be their political opinions, who will fail to take advantage of this potent means thus presented to them of establishing direct contact between the Indian and British peoples. There will be some whose inclination, it may be, will prompt them to condemn the scheme of procedure on which His Majesty's Government has decided. Others may criticise this or that part of the proposals. The reply to these last is that the plan outlined stands as a single comprehensive whole, and should be so regarded. Of the first, I would ask in all sincerity whether disagreement on the particular machinery to effect the end which we all alike pursue is sufficient ground for any man to stand aside, and decline to lend his weight to the joint effort of peoples that this undertaking represents. I have never concealed from myself that there are and will be differences of opinion between the two peoples, just as there are differences of opinion within Great Britain and India on these matters. It is through disagreement, and the clash of judgment, that it is given to us ultimately to approach the knowledge of the truth. It is also inevitable that, on issues so momentous, difference of judgment will be founded on deep and sincere conviction. But, if difficult, our general line of conduct is surely plain. Where possible, it is our duty to bring these differences to agreement; where this is at any given moment not practicable without surrender of something fundamental to our position, it is our duty to differ as friends, each respecting the standpoint of the other, and each being careful to see that we say or do nothing that will needlessly aggravate differences which we are unable immediately to resolve.

The effect that such differences will have upon the relations between the two countries will depend upon something which lies deeper than the differences themselves. All friendships are subject at times to strains which try the tempers and lay men under the necessity of exercising considerable forbearance and restraint. Such strains are indeed a sovereign test, for just as one is the stronger for rising superior to the temptation to which another yields, so true friendship flourishes on the successful emergence from the very test which would dissolve any less firmly founded partnership. In real friendship each party is constrained to see the best in the other's case—to give credit for the best motives, and place the most charitable interpretation upon actions which they might wish otherwise. Above all, friends will strive to correct differences by appeal to the many things on which

they are agreed, rather than lightly imperil friendship by insistence on points in regard to which they take conflicting views.

Thus I would fain trust it would be in the present case. I do not think I am mistaken if I assert that it is the fixed determination of the overwhelming majority of the citizens both of India and Great Britain to hold firmly by the good-will which, through many trials and, it may be, through some false steps on the part of each, has meant much to both. In each country there may be from time to time misunderstanding of the other. Let us not magnify such things beyond their value. Least of all let us permit such transient influences to lead us to lose sight of the rich prize of achievement of a common purpose, which we may assuredly win together but can hardly win in separation. It is my most earnest hope that this joint endeavour to solve a problem, on the wise treatment of which so much depends, may be inspired by such a spirit as shall offer good hope of reaching an issue to the great and abiding good of India and of all her sons.

IRWIN,

The 8th November, 1927. *Viceroy and Governor-General.*

APPENDIX R

The following extract[1] from the speech of Viscount Chelmsford delivered on November 24, 1927, in the House of Lords, gives a brief, but authoritative, account of the genesis of the Reforms :—

'I think the ball was set rolling with regard to the policy of reform by a very remarkable utterance mady by my noble friend Lord Sinha, who is not here to-night. In 1915 he addressed the Indian National Congress as their President. It is very remarkable that, with the extreme views expressed by many Indians at that time, a man of his moderation, the foremost Indian of the time, should have been chosen. The remarkable passage in Lord Sinha's address was that in which he pleaded with the British Government to declare two things: first, their policy with regard to future constitutional development, and then that, as an earnest of their sincerity in putting forward that announcement of constitutional development, they would state their readiness to take the first steps in that direction. This was at Christmas time in 1915. I came home from India in January, 1916, for six weeks before I went out again as Viceroy, and when I got home I found that there was a Committee in existence at the India Office, which was considering on what lines future constitutional

[1] See *Parliamentary Debates* (pub. by the Government of India), 1928, pp. 160-63.

development might take place. That Committee, before my return in the middle of March, gave me a pamphlet containing in broad outline the views which were held with regard to future constitutional development. When I reached India I showed this pamphlet to my Council and also to my noble friend Lord Meston, who was then Lieutenant-Governor of the United Provinces. It contained what is now known as the diarchic principle.

In this connection it might interest your Lordships to know how the epithet 'diarchic' first arose. At one of the first councils that I held on the subject, Sir William Meyer, a man of considerable erudition and very acute mind, when he heard the principles on which this proposal developed, as it appeared in the brochure, said that it reminded him of the division of central and imperial provinces under the early Roman Empire, which Mommsen called 'diarchy'. From that chance remark—it could only have been a chance remark, because I am sure that Sir William Meyer, if he had waited to think a little further, would have seen on reflection that there was no resemblance between the diarchy of Mommsen and the diarchy in our scheme—the word 'diarchic' has spread as an epithet of prejudice in connection with the reforms which were instituted at that time. Since people very often wonder how the word came to be used, I think it may interest your Lordships to mention that fact.

Both the Council and Lord Meston, who was then Sir James Meston, reported adversely on the proposals for constitutional development contained in that pamphlet. We proceeded to consider a Despatch on different lines, which were rather in the nature of an extension of the old Morley-Minto Reforms, but, as the then Secretary of State pointed out, our proposals failed to fix the enlarged Councils with responsibility. Mr. Chamberlain declared that a mere increase in numbers did not train Indians in self-government and did not advance its object unless the Councils could at the same time be fixed with some definite powers and real responsibility for their action. Surely in that criticism of Mr. Chamberlain lies the basic principle of the announcement that was made in August, 1917. It is true that Mr. Montagu was the mouth-piece of that announcement, but it is common knowledge that the announcement in its substance had been framed before Mr. Montagu assumed office.

With that announcement the situation regarding the consideration of reforms changed at once. I immediately asked my Council to work on the principles embodied in that announcement. It is interesting to note that Mr. Montagu was doing the very same thing in

London and when we met in India, in November of that year, we found that both my Council and the India Office had arrived at substantially the same conclusion—namely, that, if you were to carry out the announcement as pronounced by His Majesty's Government, embodying responsibility and advance by stages, the diarchic method must be employed. But Mr. Montagu and I were not content with this, and when we went round in India we were always interviewing deputations and leading men, whether Indians or Governors, and trying to get away from what is called diarchy. But when we brought the proposals of other people to the test of the announcement which was really our terms of reference, we always found ourselves back at the fact that we had to come to the diarchic method.

After long striving, we found no way out and, of course, that method is embodied, as your Lordships know, in our Report. But I am sure that no one who reads our Report—I am afraid very few people have read it—can imagine for one moment that we put forward our proposals otherwise than on the basis that, having sought all the alternative methods of carrying out the announcement of His Majesty's Government, we were driven back to the question of a Constitution on the lines embodied in what is called diarchy. And I would remind your Lordships that in that same Report which I read to your Lordships just now, the Committee presided over by Lord Selborne said this :—

> 'In the opinion of the Committee, the plan proposed by the Bill is conceived wholly in this spirit, and interprets the pronouncement of the 28th August, 1917, with scrupulous accuracy. It partitions the domain of Provincial government into two fields, one of which is made over to Ministers chosen from the elected members of the Provincial Legislature while the other remains under the administration of a Governor-in-Council. This scheme had evoked apprehensions which are not unnatural in view of its novelty. But the Committee, after the most careful consideration of all suggested alternatives, are of opinion that it is the best way of giving effect to the spirit of the declared policy of His Majesty's Government. Its critics forget that the announcement spoke of a substantial step in the direction of the gradual development of self-governing institutions with a view to the progressive realisation of responsible government and not of the partial introduction of responsible government; and it is this distinction which justifies the method by which the Bill imposes responsibility, both on Ministers to the Legislative Council and on the

members of the Legislative Council to their constituents, for the results of that part of the administration which is transferred to their charge.'

APPENDIX S

An Act to amend section 84A of the Government of India Act with respect to the time for the appointment of a Statutory Commission thereunder.

D. 1927.

(*23rd November, 1927*).

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Time for appointment of Statutory Commission.

1. In section 84A of the Government of India Act (which relates to the appointment of a Statutory Commission for the purpose of inquiring into the working of the system of government and other matters), for the words 'At the expiration of ten years' there shall be substituted the words 'Within ten years'.

Short title and printing.

2.—(1) This Act may be cited as the Government of India (Statutory Commission) Act, 1927.

9 and 10 Geo. c. 101.

(2) Sub-section (2) of section 45 of the Government of India Act, 1919 (which relates to the printing of the Government of India Act), shall have effect as if herein re-enacted and in terms made applicable to the amendment of the Government of India Act effected by this Act.

APPENDIX T

THE PUBLIC SERVICE COMMISSION (FUNCTIONS) RULES, 1926.

HOME DEPARTMENT

NOTIFICATION

ESTABLISHMENTS

SIMLA, *the 14th October, 1926.*

No. F.—178-14-24.—The following resolution by the Secretary of State for India in Council is published for general information :—

RESOLUTION

In exercise of the powers conferred by sub-section (2) of section 96C of the Government of India Act, the Secretary of State for India, with the concurrence of a majority of votes at a meeting of the Council of

India held this 22nd day of September 1926, hereby makes the following Rules .—

PART I

PRELIMINARY

1. These rules may be called the Public Service Commission (Functions) Rules, 1926.

2. For the purposes of these rules, the services described as 'All-India Services,' 'Central Services, Class I,' 'Central Services, Class II,' and 'Provincial Services' shall be deemed to be composed as follows :—

The All-India Services shall consist of (*a*) members of the services included in Schedule I appended to these rules, and (*b*) military officers and other officers who hold in a substantive capacity posts borne on the cadres of the said services.

The Central Services, Class I, shall consist of members of the services, and officers holding the posts, included in Schedule II appended to these rules, and of members of such other services and officers holding such posts under the administrative control of the Governor-General in Council as the Governor-General in Council, with the previous approval of the Secretary of State in Council, may from time to time declare, by notification in the *Gazette of India*, to be included in the Central Services, Class I.

The Central Services, Class II, shall consist of members of such services and officers holding such posts under the administrative control of the Governor-General in Council (other than the services and posts included in Schedules I and II) as the Governor-General in Council may from time to time declare, by notification in the *Gazette of India*, to be included in the Central Services, Class II.

The Provincial Services shall consist of the members of such services (other than the services included in Schedule I) and officers holding such posts under the administrative control of the Local Government of a Governor's Province as the Local Government may, from time to time, by notification in the local Gazette, declare to be included in the Provincial Services of that province.

And in these rules :—

The term special post means any post of a special character (not included in the All-India, Central or Provincial services) under the administrative control of the Governor-General in Council or the Local Government of a Governor's province which the Governor-General in Council or the Local Government, as the case may be, may declare to be a special post for the purposes of these rules.

PART II

FUNCTIONS OF THE COMMISSION IN REGARD TO RECRUITMENT TO THE PUBLIC SERVICES

A.—ALL-INDIA SERVICES AND CENTRAL SERVICES

Class I

3. The Commission shall advise the Governor-General in Council on any question connected with recruitment to an All-India Service or a Central Service, Class I, which the Governor-General in Council may refer to it.

4. When any competitive examination is to be held in India for the purposes of recruitment to any such service, the Commission shall—

(i) advise the Governor-General in Council in regard to the regulations prescribing the—

(*a*) qualifications of candidates,

(*b*) conditions of admission to the examination, and

(*c*) syllabus of the examination ;

(ii) announce the number of vacancies to be filled from among the candidates for the examination ;

(iii) make all arrangements for the actual conduct of the examination ;

(iv) arrange the candidates in order of merit on the results of the examination ; and

(v) forward a list of the candidates so arranged to the Governor-General in Council.

5. When recruitment to any such service is to be made in India by selection, the Commission shall—

(i) advise the Governor-General in Council in regard to the rules regulating the qualifications of candidates and the submission of applications ;

(ii) announce the number of vacancies and, when necessary, invite applications ;

(iii) consider all applications received and interview such candidates as it considers most suitable for appointment ; and

(iv) submit to the Governor-General in Council a list, consisting of such number as he may fix, of the candidates whom it considers most suitable for appointment, in the order of preference :

Provided that—

(*a*) the Governor-General in Council shall, if he thinks fit, appoint an officer to represent the Service or Department for which

recruitment is being made, who shall be present at the interview referred to in clause (iii) ;

(*v*) when recruitment is made by selection owing to the failure of a competitive examination to give adequate representation to different communities, the functions of the Commission shall be confined to the recommendation of candidates in accordance with such orders as the Secretary of State in Council or the Governor-General in Council, as the case may be, may pass in this behalf.

6. When recruitment is to be made by promotion to any permanent post in an All-India Service (other than the Indian Civil Service) or a Central Service, Class I, the Commission shall—

(i) consider the claims of candidates nominated by the Local Government or the Head of the Department, as the case may be, and

(ii) thereafter advise the Governor-General in Council in respect of each candidate nominated whether his qualifications are sufficient and whether his record proves him to have the requisite character and ability for the service to which it is proposed to appoint him, and

(iii) arrange the candidates in order of preference.

7. Notwithstanding anything contained in these rules, it shall not be necessary for the Governor-General in Council to consult the Commission in regard to the selection for appointment to a Central Service, Class I, of any officer holding His Majesty's commission or who is already a member of an All-India Service or a Central Service, Class I.

B.—Provincial Services, Central Services, Class II, and Special Posts

8. The Commission shall, if so required by the Governor-General in Council, perform the same functions in regard to recruitment to any Central Service, Class II, or to any special post to which the appointment is made by the Governor-General in Council, as it is required by rules 3 to 5 to perform in the case of Central Services, Class I.

9. The Commission may, subject to the approval of the Governor-General in Council, perform such functions in regard to recruitment to Provincial Services or to any special post to which appointment is made by a Local Government as the Local Government may invite it to undertake.

PART III.

FUNCTIONS OF THE COMMISSION IN REGARD TO DISCIPLINARY CASES

10. The Governor-General in Council shall—

(i) before considering any appeal presented to him in accordance with the Statutory Appeal Rules against any order—

(*a*) of censure,

(*b*) of withholding an increment or promotion,

(*c*) of reduction to a lower post,

(*d*) of suspension,

(*e*) of removal,

(*f*) of dismissal, or

(ii) before passing any original order—

(*a*) withholding an increment or promotion,

(*b*) of reduction to a lower post,

(*c*) of removal, or

(*d*) of dismissal,

consult the Commission in regard to the order to be passed thereon :

Provided that it shall not be necessary for the Governor-General in Council to consult the Commission in any case in which the Commission has at any previous stage given advice as to the orders to be passed and no fresh question has thereafter arisen for determination.

EXPLANATION.—Nothing in this rule shall be deemed to apply in the case of any order giving notice to an officer, in accordance with the terms of his contract of employment, of the termination of that employment.

11. Before forwarding to the Secretary of State in Council an appeal made to him in accordance with the Statutory Appeal Rules, the Governor-General in Council shall obtain the advice of the Commission as prescribed in Rule 10 :

Provided that, if the Commission has at any previous stage given advice as to the orders to be passed and no fresh question has thereafter arisen for determination, it shall not be necessary for the Governor-General in Council to consult the Commission.

12. The Governor-General in Council may consult the Commission as to the orders to be passed on any memorial submitted to him by an officer of an All-India or a Central Service in accordance with the memorial rules.

13. The Governor or Chief Commissioner or the Local Government of any province may, before passing any order of the kind specified in Rule 10, consult the Commission in regard to the order to be passed.

14. In any case in which the advice of the Commission is sought under these Rules, the record of the case shall be forwarded to the Commission and the opinion given by the Commission shall form part of the record of the case and shall be communicated to the officer or officers concerned along with the orders of the authority empowered to pass orders in the case.

PART IV.

OTHER FUNCTIONS.

15. The Commission shall advise the Governor-General in Council on any question connected with the pay, allowances, pensions, provident or family pension funds, leave rules, or conditions of service generally of any All-India or Central Service which he may refer to it.

16. The Commission shall, if so requested by a Local Government, advise the Local Government on any question of the nature specified in Rule 15 connected with a Provincial Service.

17. If any question arises as to whether or as to the extent to which the interests of any officer of an All-India Service or a Central Service, Class I, or the interests of any class of such officers, have been adversely affected by reason of the abolition of any post or class of posts, the Governor-General in Council shall refer the case to the Commission for advice in regard to the orders to be passed thereon.

18. The Commission shall advise the Secretary of State for India on any question which he may refer to it through the Governor-General in Council.

PART V.

PROCEDURE.

19. Every question at a meeting of the Commission shall be determined by a majority of the votes of the Members present and voting on the question, and, in the case of an equal division of the votes, the Chairman shall have a second or casting vote.

20. If the Chairman is unable to be present at a meeting of the Commission, he shall appoint one of the Members to act for him, and the Member so appointed shall have all the powers of the Chairman at that meeting :

Provided that, unless the Chairman otherwise directs, no action shall be taken upon any decision arrived at in a meeting at which he was not present, until he has been informed of such decision ; and, upon being so informed, he may direct that any such decision shall be reconsidered at a meeting at which he is present.

21. The proceedings of the Commission shall not be invalidated by any vacancy in the office of a Member.

22. The quorum for a meeting of the Commission shall be three, but the Chairman may adjourn any business at a meeting if he is of opinion that it cannot conveniently be transacted owing to the non-attendance of any Member.

23. All decisions of the Commission shall be recorded by the Secretary, who shall be appointed by the Commission with the approval of the Governor-General in Council, in accordance with the directions of the Commission, and it shall be open to any Member who dissents from a decision to record his dissent and, if he thinks fit, his reasons for dissenting.

24. Whenever under these rules the Commission is required to give advice, or to submit proposals, to, or to be consulted by, any authority, the decision of the Commission shall be communicated in a letter signed by the Secretary, and, in a case where the decision is not unanimous, neither the fact of, nor the ground for, dissent shall be communicated unless the Chairman so directs.

25. The Commission may refer any matter to an individual Member or to a Committee, consisting of Members and such other persons, if any, as the Commission may appoint, for consideration and report to the Commission.

26. (1) The Commission may, subject to such directions as it thinks fit, delegate to a Committee constituted from among the Members any of its functions under sub-clause (c) of clause (i), or clause (ii), clause (iii), clause (iv) or, clause (v) of Rule 4, or under clause (ii), clause (iii), or clause (iv) of Rule 5, or under Rule 6, or any analogous functions which the Commission may be required or invited to perform under Rule 8 or Rule 9 of these Rules.

(2) Every such Committee shall consist of not less than two Members.

27. The decision of any Committee to which powers have been delegated under Rule 26 shall be communicated to the Chairman before any action is taken thereon, and the Chairman may thereupon direct that such decision shall be referred to a meeting of the Commission for further consideration and decision ; but in default of such direction, the decision of the Committee shall be deemed to be the decision of the Commission.

28. The Chairman or, in his absence, a Member designated by him in this behalf, may deal with any urgent matter appearing to him to require immediate action. Such action shall, if taken by the Chairman, be reported to the Commission at its next meeting, and,

if taken by another Member, be reported to the Chairman and by him to the Commission at its next Meeting.

29. In matters for which no provision is made by these rules, the Commission may regulate its proceedings in such manner as it thinks fit.

SHEDULE I.

1. Indian Civil Service.
2. Indian Police Service.
3. Indian Agricultural Service.
4. Indian Educational Service.
5. Indian Forest Service.
6. Indian Forest Engineering Service.
7. Indian Medical Service (Civil).
8. Indian Service of Engineers.
9. Indian Veterinary Service.

SHEDULE II.

A. SERVICES.

1. Indian Audit and Accounts Service.
2. Superior Service Officers of the Military Accounts Department.
3. Mint and Assay Departments.
4. Imperial Customs Service.
5. Superior Telegraph Engineering and Wireless Branches of the Post and Telegraph Department.
6. Geological Survey of India (Director, Superintendents, Assistant Superintendents and Chemist).
7. Indian Meteorological Service (Director-General of Observatories and Meteorologists).
8. Department of Mines in India.
9. Gazetted Staff of the Indian Stores Department.
10. Indian Railway Service of Engineers.
11. Superior Revenue Establishment of State Railways (excluding local Traffic Service).
12. Archaeological Department.
13. Zoological Survey of India.
14. Survey of India, Class I.
15. Indian Ecclesiastical Establishment.
16. Political Department of the Government of India.
17. Medical Research Department (including I.M.S. officers).

18. Opium Department (excluding officers who joined the Department after 2nd April, 1907)
19. Bengal Pilot Service.

B. Posts.

1. Posts and Telegraph Department.
   (i) In the Postal Department:—
   Deputy Director-General.
   Postmasters-General.
   Deputy Postmasters-General.
   Assistant Directors-General.
   Presidency Postmasters (including Postmaster, Rangoon).
   (ii) In the Telegraph Traffic Branch :—
   Deputy Director-General.
   Assistant Director-General.
   First Division of the Superior Traffic Branch.
2. Commissioners and Assistant Commissioners of Income-Tax.
3. Commissioners, Deputy Commissioners, and General Managers, Northern India Salt Revenue Department.
4. Officers of the Cantonment Department if on the Supernumerary List.

APPENDIX U

Some Aspects of Provincial Finance with special reference to Bengal.[1]

The Problem

The system which was finally evolved as a consequence of the gradual development of provincial finance from 1871 onwards, and which was in force before the introduction of the Montagu-Chelmsford Reforms, was known as the system of 'divided heads'. Under it [2] the proceeds of certain heads of revenue were credited to the central Government ; those of certain others were made over to the provincial Governments to enable them to meet their expenditure on the ordinary provincial services; and those of the remaining heads were divided between the central and provincial Governments. Similarly,

[1] This Paper was read and discussed at the Twelfth Conference of the Indian Economic Association held at Mysore in the first week of January, 1929. As it has a bearing upon the chapter on Finance, it is reprinted here with only a few minor alterations.
[2] See p. 472 *ante*.

the heads of expenditure were classified as wholly central, wholly provincial, and partly central and partly provincial. The receipts and expenditure in England were classed as central. As I have observed[1] elsewhere, although the provincial Governments had to a large extent a free hand in administering their share of the revenue, they had 'no inherent legal right' to it. Their financial administration was subject to the general supervision of the Government of India, and they were bound by a number of restrictions on expenditure. 'For any large and costly innovations' they had to depend 'on doles out of the Indian surplus.' They had no borrowing powers, nor could they impose any taxes without the sanction of the Government of India. In respect of financial matters, as in respect of all others, the provincial Governments had only delegated authority. With the introduction of the Reforms, this system of 'divided heads' was replaced by the existing financial arrangements. As is well-known, these arrangements have been based upon the scheme of central and provincial finance outlined in the Montagu-Chelmsford Report (Chap. VIII), as modified by the recommendations of the Meston Committee, and as further amended by the Joint Select Committee appointed by Parliament to revise the draft rules made under the Government of India Act[2]. They have come in for a good deal of well-merited criticism, and, undoubtedly, they are largely responsible for the unpopularity of the Reforms, and in particular for the system of Government, popularly known as dyarchy, obtaining in the Governors' provinces. For instance, in its letter No. 3116, dated the 2nd July, 1924, the Government of Bombay wrote to the Government of India as follows :—

"But there is one factor in the opinion of the Bombay Government which has done more to militate against the success of the working of the Reforms than any other and that is the division of revenues under the Meston Settlement. The Bombay Government have never ceased to protest against the inequity of this settlement......As time progresses, it is being more abundantly proved that this settlement is one in which the distribution of revenues reacts in the most inequitable manner on this Presidency.. ...It is sincerely hoped that steps will be taken at once either through the medium of the (Indian Taxation Enquiry) Committee, or by other means to readjust the financial arrangements existing between the Government of India and this Presidency, and that, until this is done, no hopes can be held out of the satisfactory working of the India Act of 1919."

[1] See pages 472-73 *ante*. [2] Also see p. 475 *ante*.

Similarly, in its letter No. 8540-D., dated Calcutta, the 21st July, 1924, the Government of Bengal wrote to the Government of India: The treatment of Bengal ' by the Meston Settlement stood condemned from the outset, and to this more than to any other cause perhaps may be attributed much of the discontent against the (reformed) system, that prevails even among the more moderate element. This settlement is one of the main defects in the constitution, and with its amendment on a basis whieh will afford means for progress, the working of the constitution in its present lines should be greatly facilitated.'

We also find in the Report (1924) of the Government of Madras [1] on the working of the reformed constitution in the province : unless the financial embarrassments of the province ' can be mitigated or removed, His Excellency the Governor in Council anticipates that no changes in the Reform scheme, whether in the direction of extending the sphere of Ministerial control or otherwise, will result in material improvement.'

It is gratifying, however, to note here that one of the most objectionable features of the Financial Settlement under the Reforms has been recently removed. Under this settlement, the provincial Governments, with the exception of the Government of Bihar and Orissa, were required to make annually a total contribution of 983 lakhs of rupees, or such smaller sum as might be determined by the Governor-General in Council, to the Government of India, in order to enable the latter to meet an anticipated, large deficit in its budget. A scale of contributions payable by those Governments in the year 1921–22 was fixed on the advice of the Meston Committee, and provision was also made in the Devolution Rules for the proportionate reduction in the contributions payable in any subsequent financial year by some of the provinces in the event of the Government of India deciding to take, for that year, as the total amount of the contribution, a smaller sum than that payable for the preceding year. The Joint Select Committee of Parliament, to which reference has already been made, had urged in 1920 that the Government of India and the Secretary of State in Council should, in regulating their financial policy, make it their constant endeavour to render the central Government independent of provincial assistance at the earliest possible date. In 1922 the Government of India renewed the undertaking, given in the Despatch of Lord Chelmsford's Government No. 296, dated June 24, 1920, that it would work its financial

[1] See its letter No. 532, dated Camp Ootacamund, July 28, 1924.

policy towards the reduction, and ultimate extinction, of the provincial contributions to itself, although it could then give no assurance as to the definite period within which the contributions would be abolished or as to the pace of their reduction.[1] The Secretary of State in Council also expressed his concurrence with the Government of India in this policy.[2] Effect has since been given to this policy. The Government of India's Budgets for 1925–26 and 1926–27 "effected [3] a reduction in the provincial contributions amounting to 3·75 crores or, if the Bengal contribution be included, a reduction from 9·83 crores by 4·38 crores to 5·45 crores;" and the Budget for the year 1927–28 provided for the complete remission temporarily for that year, of the provincial contributions.[4] Further, they have been completely and finally remitted with effect from the current financial year (1928–29).[5] This final and complete abolition of the provincial contributions is undoubtedly one of the most important financial measures adopted by the Government of India in recent years. Its beneficial effects will be far-reaching. As Sir Basil Blackett [6] very aptly remarked in 1927 :—

"Ever since the Reforms were inaugurated, the provincial contributions have been a millstone round the neck both of the central Government and of the provincial Governments, poisoning their mutual relations and hampering their every action. Their quality, even more than their amount, has strained the resources of the giver and the patience of the recipient. They have brought curses, not blessings, both to him who has given and to him who has taken. The year 1927–28 sets India free from this incubus.'

As some of the provinces, however, are still in great financial difficulty, what is now necessary is such a new re-distribution of the sources of revenue between the central and provincial Governments as will enable them both to incur all necessary exenditure and, at the same time, to balance their budgets. I shall now consider this aspect of the question.

The sources[7] of provincial revenue at present are as follows :—

(*a*) balances standing at the credit of a province;

[1] *Vide* the Despatch of the Government of India to the Secretary of State, dated Simla, the 13th July, 1922, on financial contributions, etc.

[2] *Vide* the reply of the Secretary of State to *ibid.*

[3] *Vide Budget for 1927-28* (Government of India).

[4] *Ibid.*

[5] *Vide* Sir Basil Blackett's Budget Speech on February 29, 1928.

[6] See his Budget Statement for 1927–28.

[7] Devolution Rule 14.

(*b*) receipts accruing in respect of provincial subjects;

(*c*) recoveries of loans and advances given by a local Government and of interest paid on such loans;

(*d*) payments made to a local Government by the Government of India or by other local Governments, either for services rendered or otherwise;

(*e*) the proceeds of any taxes which may be lawfully imposed for provincial purposes;

(*f*) the proceeds of any loans which may be lawfully raised for provincial purposes;

(*g*) a share (determined in the way described later on) 'in the growth of revenue derived from income-tax collected in the province, so far as that growth is attributable to an increase in the amount of income assessed'; and

(*h*) any other sources which the Government of India may by order declare to be sources of provincial revenue.

Of these sources of revenue, items (*a*), (*b*) and (*e*) have so far been of real importance to the provinces; but, except in the technical sense, item (*a*) should not be regarded as a source of revenue. As I have shown elsewhere, [1] the recommendations of the Meston Committee, and specially those which related to the allocation of the heads of revenue, having aroused strong dissatisfaction in some provinces, particularly the three presidencies, the Joint Select Committee of Parliament suggested, on grounds of policy, that there should be granted to all provinces some share in the growth of revenue from taxation on income so far as that growth would be due to an increase in the amount of income assessed. The manner in which the provincial share of the tax is determined is as follows [2] :—

If the assessed income of any year subsequent to the year 1920–21 exceeds in any Governor's province the assessed income of the year 1920–21, there must be allocated to the local Government of that province an amount calculated at the rate of three pies in each rupee of the amount of such excess.

In spite of these sources of provincial revenue and in spite of the fact that Bengal was exempted for six years with effect from 1922–23 from the payment of any contribution to the central Government, its budgets for three consecutive years from 1926–27 have been deficit budgets, and altogether it has had four balanced budgets with some surpluses, out of eight introduced into its Legislative Council since

[1] See p. 476 *ante*.   [2] Devolution Rule 15.

1921[1]. It has hitherto met its deficits by drawing upon its balances[2]. And all this has happened notwithstanding the further fact that Bengal retrenched[3] in the very first year of the Reforms to the extent of Rs. 89½ lakhs, and has since had recourse to additional taxation and further retrenchment. This clearly points to the urgent necessity of a re-examination of the whole question of provincial finance, at any rate so far as Bengal is concerned. As the Hon'ble Member in charge of the Department of Finance in Bengal said, on February 20th, 1928, in the course of his Budget Statement for the year 1928–29 :—

'Owing to the state of our finances we have been compelled to cut expenditure down to the minimum and have been able to allow for very little new expenditure........... No one realizes more than I do that this is a very unsatisfactory budget, which does not do justice to any department of Government, and, especially, to the Transferred Departments. But I do not think that any one can hold the Hon'ble Ministers, or even the Members of Government, in any way responsible for this position. It is solely due to our Financial Settlement, and until that is put right, we can expect little or no amelioration...... ......Even if this (provincial) contribution is remitted, either temporarily or permanently, we shall have to face a deficit of Rs. 37,43,000 in next year's budget. In these circumstances we may be able to carry on for a year or so, but not unless we can see ultimate relief in the near future ; and that relief must take the shape of a new Financial Settlement which will leave Bengal with an expanding income adequate for her needs and proper development. We are again addressing the Government of India reiterating our protests against the present Financial Settlement and our claims for its complete revision............When the Government of Bengal put their case before the (Simon) Commission, one of the most important points that they will urge is that the Financial Settlement was wrong *ab initio* and treated Bengal most unfairly, and it was largely owing to the shortness of funds that the working of the reformed constitution in Bengal has been so hampered and that Ministers have found it so difficult to carry on. The Government of Bengal will put in the forefront of their case a claim for a complete revision of the Financial Settlement,

[1] *Vide* the Budget Statement of the Finance Member, Bengal, for 1928-29.

[2] *Ibid.*

[3] *Vide* The National Liberal League's Appeal to the Secretary of State for India on the question of the Financial Adjustment, p. 11.

at any rate so far as Bengal is concerned, and unless that is done, I am convinced that all parties in the province will be unanimous in thinking that the successful working of the new constitution will be impossible in Bengal, however good that constitution may be in other ways'.

Coming as it does from a very responsible Member of the Government of Bengal, the weight of this statement is obvious, and is also my justification for quoting it at length.

The Remedy.

In order to remedy this state of affairs, it has been suggested by many responsible persons in Bengal that the whole of the revenue derived from the export duty on jute exported from the province, or at any rate a very substantial portion thereof, should be made over to it. Considering the fact that the net income derived from this source in Bengal was about Rs. 389 lakhs in 1926-27, [1] the suggested step, if adopted, would not merely relieve the province of its existing financial difficulties, but also enable it to spend money adequately on its nation-building departments. Now the question is: should such a step be adopted? If the receipts from the export duty on jute be credited to Bengal, Burma's claim to the proceeds from the export duty on rice exported from it will be almost irresistible. And Burma contributed over 97 lakhs of rupees to the total net revenue of Rs. 112·8 lakhs realised from the export duty on rice in 1926–27. To my mind, customs tariff should continue to be a central head of revenue. As Prof. Seligman[2] points out, customs duties are almost everywhere kept for national or federal use. The reason is obvious. In fixing these duties a Government has to take into account various questions of policy, apart from the consideration of revenue to be derived from them.

There is a further objection to the *provincialisation* of the export duty on jute. As Sir Basil Blackett rightly pointed out in the Legislative Assembly[3], so long as the monopoly conditions prevail, 'it (*i.e.*, the export duty on jute) may be a good tax; but it is obviously desirable that it should be in the hands of the central Government, so that action may be taken to reduce it the moment there may be any sign of a change in the monopolistic character of the article on

[1] Vide *Finance and Revenue Accounts of the Government of India* for the year 1926-27, p. 81.

[2] *Essays in Taxation* (1921), p. 380.

[3] On March 8, 1928.

which it is imposed.' The provincial Government should not be exposed 'to the difficulty of having to deal with the jute duty or an export duty of any kind at a moment when world conditions may have made it imperatively desirable in the economic interests of everybody that the duty should be abolished.'

Lastly, it is highly desirable that a uniform principle should be adopted in, the allocation of revenues to the provinces. The provincialisation of the export duty on jute may remove the financial stringency of Bengal, but there are other provinces, for instance Bombay, the existing resources of which are not quite adequate for meeting their various requirements. They will certainly have a legitimate ground for complaint against any arrangement which will favour only Bengal and leave them where they were before.

I am, therefore, of opinion that the most expedient measure for improving the financial position of the major provinces will be to *semi-provincialise* the taxes on income. This will mean that the major provinces will have placed at their disposal a sum of about Rs. 745 lakhs,[1] out of which Bengal and Bombay will receive about Rs. 284·5 lakhs and Rs. 160·5 lakhs respectively, and the other provinces such sums as will be determined on the basis of their contributions to the total revenue from the taxes on income. As Sir Basil Blackett observed[2] in the Legislative Assembly, the existing Devolution Rule 15 regarding the grant to the provinces of an interest in the proceeds of taxes on income which was designed for the benefit of Bombay and Bengal in particular, has altogether failed in its purpose. This will be evident from what follows. During the five years from 1922-23, Bengal obtained[3] no share in the receipts from the taxes on income ; nor did Bombay receive[4] anything out of them during the four years from 1923–24. Nor again did the Budget of the Government of India for 1927–28 make any provision for the payment of any revenue from income-tax to these two provinces[5]. But Bengal contributed,[6] during the five years from 1922–23, over Rs. 26·45 crores to the total revenue derived from the taxes on income during those years, and its contribution to

[1] This figure is based on the actual figures of 1926–27. *Vide Finance and Revenue Accounts of the Government of India* for 1926–27, p. 85. The amount may increase with the growth of trade and industry.

[2] Vide his Budget Statement for 1927–28.

[3] Vide *Statistical Abstract for British India* (1916–17 to 1925–26), also *Budget for 1927-28* (*Government of India*) ; also *Finance and Revenue Accounts of the Government of India for* 1926–27.

[4] *Ibid.* [5] *Ibid.* [6] *Ibid.*

the total income-tax revenue estimated for 1927–28, was expected to amount to Rs. 6·24 crores. Similarly, during the period from 1923–24 to 1926–27, Bombay contributed[1] over Rs. 16·08 crores to the total receipts from income-tax and its contribution for 1927–28 was estimated to amount to Rs. 3·55 crores. The United Provinces [2] also was not in a happier position. It received during the period from 1923–24 to 1926–27 only Rs. 2,504 although its total contribution during this period amounted to over Rs. 3·22 crores. I shall only add one more illustration to show the effect of the existing Devolution Rule 15 on the provincial share in the total revenue from the taxes on income. The total contribution from the major provinces for 1925–26 and 1926–27 was over Rs. 3,030 lakhs and the total amount received by them under the Devolution Rule was only about Rs. 59·4 lakhs[3]. Even the Government of India appreciates the difficulty of the provinces under the existing arrangement regarding the distribution of the sources of revenue. In the course of his reply at the end of the general discussion of the Budget for 1928–29, Sir Basil Blackett said in the Legislative Assembly[4] :

'I have full sympathy with the desire of the provinces to see their revenue increased and made more elastic. I am in some hopes that some results in this direction may be secured when the Statutory Commission has reported—some arrangement that might hand over some of the non-judicial stamps to the central Government and give in their place a really effective share of the income-tax'.

I am, however, opposed to any idea of distribution of the receipts from the non-judicial stamps, as such distribution will to a certain extent neutralize the effect of the semi-provincialisation of the income-tax.

I may observe in this connexion that my suggestion regarding income-tax will be in accordance with the modern movement in taxation. In the course of his survey of recent reforms in taxation, Prof. Seligman[5] points out that there is an important tendency in these days that taxes collected by the central Government are distributed, in part at all events, among the states and even in some cases among the localities. 'More and more,' he continues,[6] 'the fiscal problem

[1] Vide *Statistical Abstract for British India* (1916–17 to 1925–26) ; also *Budget for 1927–28* (Government of India) ; also *Finance and Revenue Accounts of the Government of India for* 1926–27.

[2] *Ibid.* [3] *Ibid.*

[4] On March 8, 1928.

[5] *Essays in Taxation* (1921), p. 540.

[6] *Ibid.*, p. 541.

is being envisaged as a totality, and the relative claims of the community, state and central Governments are being considered from the point of view of an equitable distribution of the entire burden resting upon the individual or the class. This is the most recent phase of modern tax reform.' The administration of the income-tax should continue to be in the hands of the central Government, although the provincial Governments may be required to bear a portion of the cost of the administration according to a certain principle of equity. 'If there is anything,' says the writer whom I have quoted above, 'that may be considered a well-settled induction from experience, it is that an income-tax is more and more unsuccessful as the basis of the tax becomes narrower[1]' Thus my plan of 'central administration and provincial apportionment' will secure all the ends of 'suitability,' 'efficiency', and 'adequacy' as required by writers[2] on Public Finance in connexion with any scheme of taxation. In Germany, according to Prof. Seligman,[3] the proceeds of certain indirect taxes are divided between the federal and the state Governments, and in Canada, a large part of the provincial revenue is derived[4] from the proceeds of taxes that are levied by the federal Government. Thus the suggested arrangement will not be an altogether novel thing. Besides, our income-tax is even now a divided head of revenue as has been shown before. Lastly, one should not make a fetish of the principle of the separation of the sources of revenue of the central and provincial Governments in India.

A more serious objection to my suggestion will be that it will deprive the central Government of nearly seven and a half crores of rupees annually, and, possibly, of more as the revenue from the taxes on income will show, as Sir Basil Blackett pointed out in the Assembly,[5] some improvement from year to year with the growth and prosperity of our trade and industry; and that, consequently, the central Government will be faced with deficit budgets in future. As against this it may be pointed out, in the first place, that since 1923–24 there have been decent surpluses in the central budgets and that such surpluses will recur from 1929–30 onwards.[6] Thus, on the basis of

[1] *Essays in Taxation* (1921), p. 382.
[2] *Ibid.* ch. xii.
[3] *Ibid.*, p. 387.
[4] *Ibid.*
[5] On February 29, 1929.
[6] The estimated surplus of 1927–28 was used for reducing the provincial contributions, and out of the anticipated surplus of 263 lakhs for 1928–29, 258 lakhs were utilised for the final extinction of these contributions, a small surplus of 5 lakhs being left in the budget. From 1929–30 there will be 'no outside claimant to the recurring

the figures of the last five financial years, it may be confidently asserted that, other things remaining unchanged, the apprehended deficit of the central Government will be less by, at least, two crores. The Government of India can have no justification for having surplus budgets, while provinces are starving.

In the second place, I should suggest such judicious modifications of the existing customs tariff as would yield every year an additional amount of revenue not exceeding two crores. Regard being had to the fact that the Budget estimate for 1928–29 has put the revenue from the customs duties at 50·18 crores, I do not think there will be any difficulty in securing the additional amount of income if an honest and sincere attempt is made to raise it.

Thirdly, the existing convention[1] agreed upon in September, 1924, on which the separation of railway finance from general finance is based, and under which the general revenues of the central Government receive annually 'a definitely ascertainable contribution' from railways, should be so modified as to ensure an additional annual income of, at least, a crore of rupees from the railways to the general revenues. In view of the fact that at the end of the current (1928–29) financial year there will have accumulated over 19 crores in the Railway Reserve Fund,[2] and also in view of the fact there was an estimated total of over 11 crores in the Railway Depreciation Fund[3] at the end of 1927–28, the suggested additional contribution may be legitimately required of the railways.

My fourth suggestion is that the Indian Income-tax Act, 1922, as subsequently modified, should be so amended that agricultural income, at least as defined in section 2 (1) (a) of the Act, *i.e.*, any rent or revenue derived from land used for agricultural purposes, might be made assessable to income-tax; and, secondly, that such income might be taken into account in determining the rate at which the income-tax should be levied on income from other sources.

The question of assessing agricultural income to income-tax has been sufficiently discussed by the Indian Taxation Enquiry Committee, 1924–25, and I have no space at my disposal to deal with it here. My only point is that a scheme of taxation which has provided for a continued duty on salt can have absolutely no justification for exempting men like the Zemindars of Bengal and the

surpluses.'—*Vide* Sir Basil Blackett's Budget Statements for 1927–28 and 1928–29.

[1] *Vide India in* 1924–25, App. X.

[2] *Vide The Railway Budget* for 1928–29.

[3] *Ibid.*, 1927–28.

Talukdars of Oudh from the payment of income-tax in respect of any rent or revenue derived from land used for agricultural purposes. Justice as well as fiscal necessity requires the change I have suggested. If effected, it will fetch considerable additional revenue to both the central and provincial Governments. If the representatives of vested interests raise any objection to the suggested change, they must be definitely told, as Pitt once said[1] in connexion with the East India Company Bill, 1784, in reference to the rights and privileges of the East India Company, that no charter ought to be suffered to stand in the way of a reform on which the welfare of the country depends, and that no rights, however sacred, of any body of men can supersede state necessity.

Finally, I should suggest that military expenditure should be further reduced by, at least, three crores. Be it said to the credit of the authorities that the net military expenditure[2] was reduced from Rs. 69·81 crores in 1921-22 to Rs. 55·97 crores in 1926-27[3]. The revised estimate of the same for 1927-28 was Rs. 54·92 crores and the budget estimate for the current (1928-29) year has been put at Rs. 55·10 crores.[4]

The Indian Retrenchment Committee (1922-23), of which Lord Inchcape was the Chairman, recommended in 1923 that the Government of India should not be satisfied with a military budget of Rs. 57 crores (for 1923-24), and that a close watch should be kept on the details of military expenditure with the object of bringing about a progressive reduction in the future. 'Should a further fall in prices,' it continued, 'take place, we consider that it may be possible, after a few years, to reduce the military budget to a sum not exceeding Rs. 50 crores, although the Commander-in-Chief does not subscribe to this opinion. *Even this is more, in our opinion, than the tax-payer in India should be called upon to pay, and, though revenue may increase through a revival of trade, there would, we think, still be no justification for not keeping a strict eye on military expenditure with a view to its further reduction.*'[5]

On the other hand, Sir Basil Blackett observed[6] in 1928:

'The Government have given special consideration to the matter

[1] In the House of Commons.—*Vide* P. Mukherjee, *Indian Constitutional Documents*, Vol. i, pp. 47-48.

[2] In 1913-14 it was Rs. 29·84 crores.

[3] *Vide the Budget for 1928-29.*

[4] *Ibid.*

[5] The italics are mine.

[6] *Vide* his Budget Statement for 1928-29.

during the current year and we have come to the conclusion that the figure proposed for next year cannot be reduced if India is to make a reasonable provision for her defence in modern conditions.'

His Excellency the Commander-in-Chief also said,[1] after referring to certain figures :

'It must be improbable that, however strict a watch we may keep on expenditure, a further progressive reduction on any appreciable scale can be expected.'

It should however, in fairness, be mentioned in this connexion that 'since the Inchcape Committee reported, it has been decided to charge the army with the cost of certain services rendered by other Government Departments which previously were given free.'[2] The estimated cost of these services for the current year is Rs. 45·64 lakhs. In view of all this, I have suggested above the reduction in military expenditure by Rs. 3 crores. And I do not think that it will be impossible for the Government of India to effect the reduction without diminishing the efficiency of the Army, if a supreme effort is made to bring it about. As will appear from the following table, there has been, according to *Labour Gazette*,[3] Bombay, September, 1928, an appreciable fall in wholesale prices since 1923 when the Inchcape Committee reported.

" The annual movements in food, non-food and general wholesale prices.
JULY 1924 = 100

—	Food Index No.	Non-food Index No.	General Index No.
Twelve—monthly average for 1922.	186	187	187
,, ,, ,, ,, 1923.	179	182	181
Eight—monthly ,, ,, 1928.	140	146	144 "

Though the index number of wholesale prices in Bombay does not exactly indicate the level of wholesale prices in other parts of India, it can be regarded however as fairly representative of those prices for my present purposes. Time, therefore, has come for giving effect,

[1] Vide *The Legislative Assembly Debates* of March 8, 1928.
[2] *Ibid.*
[3] Published by the Labour Office, Government of Bombay.

substantially at least, to the recommendation of the Inchcape Committee to which I have referred before.

I should also propose that if the suggested reduction in military expenditure cannot be otherwise effected, it should be brought about by the replacement of a portion of the British element in the Indian Army by Indian element. According to the Report[1] of the Inchcape Committee, in 1922-23, the average, approximate annual cost of a British soldier was Rs. 2,503, and that of an Indian Sepoy was Rs. 631 only. Further, in the same year, the average, approximate annual cost of a British Officer was Rs. 12,460, and that of an Indian officer was Rs. 2,324 only. Things cannot have changed materially since 1922-23. It is evident from these figures that if a portion of the British element in the Indian Army is replaced by Indian element as I have suggested, considerable saving will be effected in India's military expenditure.

The suggestions outlined above, if accepted, will enable the Government of India not merely to meet its expected deficit in the event of the semi-provincialisation of the taxes on income, but also to have a small surplus every year. On the other hand, my scheme, as I have shown before[2], will place at the disposal of the major provinces a sum of about Rs. 745 lakhs, and possibly more with the expansion of commerce and industry from year to year. What will be the ultimate effects of this upon the country ? I feel that I cannot better describe them than by repeating, with slight changes[3], what Sir Basil Blackett said[4] on February 28, 1927, in reference to the remission of the provincial contributions to the extent of Rs. 5·45 crores :—

'What romance lies behind this figure (7·45 crores) when it is translated into spending capacity in the hands of the Ministers in the provinces!.........What will 7·45 crores a year transfigured into goods and services, available year by year in the hands of the provincial Governments, mean in the promotion of human happiness, in the prevention of preventable diseases and ignorance, in the widening of the opportunities for a good life for many crores of the people of India ! '

In this connexion I should like to observe that the Government of India must not forget that, to take a single instance, 'in 1921, out

[1] *Vide* App. C and D to the Report.
[2] See p. 617 *ante*.
[3] In figures, i.e. by reading 7·45 for 5·45.
[4] In the Legislative Assembly. *Vide* his Budget Statement for 1927-28.

of a total population of 247 millions in British India, only 22·6 millions were literate'; and that in 1926-27 only '7·8 million pupils, or 21·03 per cent. of the population of school-going age, were undergoing primary education.'

* * * * * *

APPENDIX V

THE GOVERNMENT OF INDIA
NOTIFICATION.

LEGISLATIVE DEPARTMENT.

SIMLA, THE *24th August 1929*.

No. 293—1/29-C. & G.—In exercise of the powers conferred by sub-section 1 of section 67, read with section 129A, of the Government of India Act, the Governor-General in Council, with the sanction of the Secretary of State in Council, is pleased to direct that the following further amendment shall be made in the Indian Legislative Rules, namely:—

After Rule 17 of the said Rules the following rule shall be inserted, namely:—

'17-A. Notwithstanding anything contained in rule 15 or rule 17, the President shall not have or exercise any power to prevent or delay the making or discussion of any motion relating to a Bill made by the Member in charge of the Bill or to refuse to put, or delay the putting of, the question on any such motion, unless such power is expressly conferred upon him by, or such motion or discussion or the putting of such question, as the case may be, is expressly prohibited or directly precluded by, any provision of the Government of India Act, these Rules or the Standing Orders.' [1]

APPENDIX W

FORM OF PETITION[2]

TO THE $\frac{\text{Council of State}}{\text{Legislative Assembly}}$.

Whereas a Bill entitled a Bill..........................(Here insert title of Bill) is now under the consideration of the Indian Legislature[3], the

[1] This Rule 'is intended to prevent a repetition of the deadlock over the Public Safety Bill at the Delhi session of the Assembly last (1929) April.'

[2] See also the Govt. of India Notification, No. 592, dated Delhi, the 30th March 1922, in the *Cal. Gaz.* Part IA, April 12, 1922, pp. 108-111.

[3] Or the Council of State in the case of the Council of State.

numble petition of..[Here insert name and designation or description of petitioner (or petitioners) in concise orm, e.g., 'Ram Lal and others' or 'the inhabitants of.................. .....' or 'the municipality of...........................' etc.]

neweth..................................(Here insert concise statement of ase.) and accordingly your petitioner (or petitioners) pray that ....(Here insert 'that the Bill be or be not proceeded 'ith,' or 'that special provision be made in the Bill to meet the case f your petitioners' or any other appropriate prayer regarding the Bill) and your petitioner (s) as in duty bound will ever pray

assembly

Name of petitioner	Address	Signature or thumb impression

Countersignature of Member presenting.

Or (in the case of the Council of State)

Signature of petitioner.

Countersignature of Member presenting.

APPENDIX X

THE LEGISLATIVE ASSEMBLY DEPARTMENT (CONDITIONS OF SERVICE) RULES, 1929.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

SIMLA, *the 31st August, 1929.*

No. 82-1/29-C. and G.—The following Resolution by the Secretary of State for India in Council is published for general information :—

RESOLUTION

In exercise of the powers conferred by Sections 96B and 96C of the Government of India Act, the Secretary of State, with the concurrence of the majority of votes at a meeting of the Council of India held on this 7th day of August, 1929, hereby makes the following Rules, namely :—

1. These rules may be called the Legislative Assembly Department (Conditions of Service) Rules, 1929.

2. In these rules :

(*a*) 'Assembly' means the Legislative Assembly;

(*b*) 'President' means the President of the Legislative Assembly.

3. The Assembly Department shall consist of—

(*a*) a Secretary, a Deputy Secretary and an Assistant Secretary, who shall be the officers of the House ; and

(*b*) so many Superintendents, Reporters, Assistants, Clerks, Stenographers, Translators and menials as shall from time to time, be found necessary by the Governor-General in Council.

4. The officers of the House shall be appointed by the Governor-General after consultation with the President. With the exception of the first appointments of Secretary and Assistant Secretary and of all appointments by promotion from Assistant Secretary and Deputy Secretary, the officers of the House shall be appointed from persons recommended as qualified for appointment by the Public Service Commission in accordance with the procedure laid down in Rules 5 and 6 of the Public Service Commission (Functions) Rules, 1926[1], for recruitment to Central Services, Class I, with the substitution of 'the Governor-General' for 'the Governor-General in Council', and with the further modification that, in place of an officer appointed by the Governor-General under part (*c*) of the proviso to Rule 5 of the said Rules, the President shall be entitled to sit with the Commission at interviews referred to in clause (iii) of the last-mentioned Rule.

5. The members of the ministerial establishment of the Assembly Department shall be appointed by the President after consultation with the Secretary, and all appointments to these posts of persons not already in the service of Government, shall be made from among persons who have been recognized by the Public Service Commission as qualified to hold an appointment in the class in which a vacancy exists.

6. (1) The pay[2] of the officers of the House shall be as follows :—

	Rs.
Secretary	2,500–75–3,250
Deputy Secretary	1,500–50–2,000
Assistant Secretary	1,000–50–1,250

(2) The pay of members of the ministerial and menial establishments of the Assembly Department shall be as fixed by the Governor-General in Council.

7. The appointments to the menial establishment shall be made by the President after consultation with the Secretary.

[1] See Appendix T. [2] Per month.

8. (1) In respect of the officers of the House no order of the kind described in Rule 10 (1) of the Public Service Commission (Functions) Rules, 1926, shall be passed except by the Governor-General acting after consultation with the President, but before passing any order of removal or dismissal, the Governor-General shall consult the Public Service Commission, and the Public Service Commission shall thereupon take action as if the order to be passed were an order in respect of which it had been consulted under Rule 10 of the Public Service Commission (Functions) Rules, 1926.

(2) Nothing in this rule shall be construed as empowering the Governor-General to dismiss from Government service any officer of the House who was originally appointed to such service by the Secretary of State in Council, or as affecting the right of appeal to the Secretary of State in Council which may be possessed by any officer of the House in virtue of any other Rule or law for the time being in force.

9. Any order of the kind described in Rule 10 (1) of the Public Service Commission (Functions) Rules, 1926, may be passed by the President against any member of the ministerial establishment of the Assembly Department after consultation with the Secretary, and an appeal shall lie from any such order to the Governor-General, who may consult the Public Service Commission in regard to the order to be passed thereon and the Commission shall thereupon take action as if the appeal were an appeal in respect of which it had been consulted under Rule 10 of the Public Service Commission (Functions) Rules, 1926.

10. Any order of the kind described in Rule 10 (1) of the Public Service Commission (Functions) Rules, 1926, may be passed by the President against any member of the menial establishment of the Assembly Department and there shall be no appeal against any such order.

11. In all matters for which special provision is not made in these Rules, the conditions of service of the officers of the House, and of the ministerial and menial establishments of the Assembly Department, shall be governed by the Rules and orders for the time being applicable to such classes of Government servants as shall be specified by the Governor-General in Council.

L. GRAHAM,
Secretary to the Government of India.

APPENDIX Y

The Viceregal Pronouncement of October 31st, 1929.

GOVERNMENT OF INDIA.

Home Department.

NOTIFICATION.

Public.

New Delhi, *the 31st October, 1929.*

No. 4485.—The following statement by His Excellency the Viceroy and Governor-General is published for general information.

H. G. HAIG,
Secy. to the Govt. of India.

STATEMENT

I have just returned from England where I have had the opportunity of prolonged consultation with His Majesty's Government. Before I left this country, I said publicly that, as the King-Emperor's representative in India, I should hold myself bound to tell my fellow-countrymen, as faithfully as I might, of India's feelings, anxieties and aspirations. In my endeavours to discharge that undertaking I was assisted by finding, as I had expected, a generous and sincere desire, not only on the part of His Majesty's Government but on that of all persons and parties in Great Britain, to hear and to appreciate everything that it was my duty to represent.

These are critical days, when matters by which men are deeply touched are in issue and when, therefore, it is inevitable that political feeling should run high, and that misunderstandings, which would scarcely arise in conditions of political tranquillity, should obtain firm foothold in men's minds. I have, nevertheless, not faltered in my belief that, behind all the disquieting tendencies of the time, there lay the great mass of Indian opinion, overflowing all divisions of race, religion, or political thought, fundamentally loyal to the King-Emperor, and, whether consciously or not, only wanting to understand and to be understood. On the other side, I have never felt any doubt that opinion in Great Britain,

puzzled as it might be by events in India, or only perhaps partially informed as to their true significance, was unshaken in its determination that Great Britain should redeem to the full the pledges she has given for India's future. On both countries the times have laid a heavy and in some ways a unique responsibility, for the influence on the world of a perfect understanding between Great Britain and India might surely be so great that no scales can give us the measure either of the price of success or the price of failure in our attempts to reach it.

In my discussions with the Prime Minister and the Secretary of State, it was inevitable that the principal topic should have been the course of events in India. It is not profitable on either side to discuss to what extent, or with what justification, the appointment of a Parliamentary Commission two years ago has affected the general trend of Indian thought and action. Practical men must take facts and situations as they are, and not as they would have them be.

Sir John Simon's Commission, assisted as it has been by the Indian Central Committee, is now at work on its Report, and until that Report is laid before Parliament, it is impossible, and even if it were possible, it would, in the view of His Majesty's Government, clearly be improper, to forecast the nature of any constitutional changes that may subsequently be proposed. In this respect every British party is bound to preserve to itself complete freedom of action. But what must constantly engage our attention, and is a matter of deep concern to His Majesty's Government, is the discovery of means by which, when the Commission has reported, the broad question of British Indian constitutional advance may be approached in co-operation with all those who can speak authoritatively for opinion in British India. I would venture to recall some words which I used in addressing the Assembly eight months ago in a reference to the then existing political situation. 'On the one side', I said, 'it is as unprofitable to deny the right of Parliament to form its free and deliberate judgment on the problem, as it would be short-sighted of Parliament to underrate the importance of trying to reach a solution which might carry the willing assent of political India'. We shall surely stray from the path, at the end of which lies achievement, if we let go either one or other of these two main guiding principles of political action.

But there has lately emerged, from a totally different angle, another set of considerations which is very relevant to what I have just stated on this matter to be the desire of His Majesty's Government.

The Chairman of the Commission has pointed out in correspondence with the Prime Minister, which, I understand, is being published in England, that, as their investigation has proceeded, he and his colleagues have been greatly impressed, in considering the direction which the future constitutional development of India is likely to take, with the importance of bearing in mind the relations which may, at some future time, develop between British India and the Indian States. In his judgment it is essential that the methods, by which this future relationship between these two constituent parts of Greater India may be adjusted, should be fully examined. He has further expressed the opinion that if the Commission's Report and the proposals subsequently to be framed by the Government take this wider range, it would appear necessary for the Government to revise the scheme of procedure as at present proposed. He suggests that what might be required, after the Reports of the Statutory Commission and the Indian Central Committee have been made, considered and published, but before the stage is reached of the Joint Parliamentary Committee, would be the setting up of a Conference in which His Majesty's Government should meet representatives both of British India and of the States, for the purpose of seeking the greatest possible measure of agreement for the final proposals which it would later be the duty of His Majesty's Government to submit to Parliament. The procedure by Joint Parliamentary Committee conferring with delegations from the Indian Legislature and other bodies, which was previously contemplated and is referred to in Sir John Simon's letter to myself of 6th February, 1928, would still be appropriate for the examination of the Bill when it is subsequently placed before Parliament, but would, in the opinion of the Commission, obviously have to be preceded by some such Conference as they have suggested.

With these views I understand that His Majesty's Government are in complete accord. For, while they will greatly desire, when the time comes, to be able to deal with the question of British Indian political development under conditions the most favourable to its successful treatment, they are, with the Commission, deeply sensible of the importance of bringing under comprehensive review the whole problem of the relations of British India and the Indian States. Indeed, an adjustment of these interests in their view is essential for the complete fulfilment of what they consider to be the underlying purpose of British policy, whatever may be the method for its furtherance which Parliament may decide to adopt.

The goal of British policy was stated in the declaration of Augus

1917 to be that of providing for 'the gradual development of self-governing institutions, with a view to the progressive realization of responsible government in India as an integral part of the British Empire.' As I recently pointed out, my own Instrument of Instructions from the King-Emperor expressly states that it is His Majesty's will and pleasure that the plans laid by Parliament in 1919 should be the means by which British India may attain its due place among His Dominions. Ministers of the Crown, moreover, have more than once publicly declared that it is the desire of the British Government that India should, in the fullness of time, take her place in the Empire in equal partnership with the Dominions. But in view of the doubts which have been expressed both in Great Britain and India regarding the interpretation to be placed on the intentions of the British Government in enacting the Statute of 1919, I am authorized on behalf of His Majesty's Government to state clearly that in their judgment it is implicit in the declaration of 1917 that the natural issue of India's constitutional progress, as there contemplated, is the attainment of Dominion status.

In the full realization of this policy, it is evidently important that the Indian States should be afforded an opportunity of finding their place, and even if we cannot at present exactly foresee on what lines this development may be shaped, it is from every point of view desirable that whatever can be done should be done to ensure that action taken now is not inconsistent with the attainment of the ultimate purpose which those, whether in British India or the States, who look forward to some unity of All-India, have in view.

His Majesty's Government consider that both these objects, namely, that of finding the best approach to the British Indian side of the problem, and secondly, of ensuring that in this process the wider question of closer relations in the future between the two parts of Greater India is not overlooked, can best be achieved by the adoption of procedure such as the Commission has outlined. When, therefore, the Commission and the Indian Central Committee have submitted their Reports and these have been published, and when His Majesty's Government have been able, in consultation with the Government of India, to consider these matters in the light of all the material then available, they will propose to invite representatives of different parties and interests in British India and representatives of the Indian States to meet them, separately or together as circumstances may demand, for the purpose of conference and discussion in regard both to the British-Indian and the All-Indian problems. It will be their earnest hope that by this means it may subsequently prove possible

on these grave issues to submit proposals to Parliament which may command a wide measure of general assent.

It is not necessary for me to say how greatly I trust that the action of His Majesty's Government may evoke response from and enlist the concurrence of all sections of opinion in India, and I believe that all who wish India well, wherever and whoever they are, desire to break through the webs of mistrust that have lately clogged the relations between India and Great Britain. I am firmly assured that the course of action now proposed is at once the outcome of a real desire to bring to the body politic of India the touch that carries with it healing and health, and is the method by which we may best hope to handle these high matters in the way of constructive statesmanship.

IRWIN,
Viceroy and Governor-General.

October 31st, 1929.

INDEX

A

B

C